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PRIDEAUX'S
PRECEDENTS
IN
CONVEYANCING;
WITH
Dissertations
ON ITS
LAW AND PRACTICE.

TWELFTH EDITION.

BY

FREDERICK PRIDEAUX,
LATE PROFESSOR OF THE LAW OF REAL AND PERSONAL PROPERTY TO THE INNS OF COURT,

AND

JOHN WHITCOMBE,
BOTH OF LINCOLN'S INN, ESQRS., BARRISTERS-AT-LAW.

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LEASES.

Division of the subject.

THE subject of Leases will be considered under the following heads :—I. The nature of a lease, the different kinds of leasehold estates or tenancies, and how they are created. II. The rent reserved upon leases, and the remedies for its recovery. III. The covenants usually inserted in leases in relation to rates and taxes, and the preservation, repair, and insurance of the demised property. IV. Covenants restrictive of the use of the demised property, and against assignment or sub-letting without the lessor's consent. V. The condition of re-entry, and the relief afforded by equity against a forfeiture thereunder. VI. The effect of alienation by lessor or lessee as regards the rent and the covenants and conditions of the lease. VII. By what modes other than forfeiture, a tenancy may be determined, and the rights of the parties at the determination thereof. VIII. Leases under powers. IX. Other matters relating to leases; and X. Stamps on leases and agreements for leases.

I. *The nature of a lease, the different kinds of leasehold estates or tenancies, and how they are created.*

Definition of a lease.

A lease is an assurance or contract whereby land or any other thing capable of being demised is let by one person to another for an interest less in point of duration than the lessor has therein. A lease may be for lives, or for a term of years, or from year to year, or at will.

Lease for a term of years.

A lease for a term of years is where a person lets to another for a certain and definite period. A lease for one year, or for a half year, or for a quarter of a year, is a lease for a term (*a*), so is a lease for a given number of years, if a person shall so long live (*b*).

Tenancy from year to year.

A tenancy from year to year is a tenancy determinable (except in cases coming within the Agricultural Holdings Act, 1875) at the end of the first or any subsequent year by either party giving to the other a half-year's notice to quit, and continuing from year to year until so determined. As regards holdings subject to the above Act, a year's notice expiring with a year of tenancy is substituted for the half-year's notice (*c*).

Tenancy at will.

A tenancy at will is where a man lets to another and either party may put an end to the tenancy at pleasure.

Tenancy from year to year was originally a tenancy at will.

A tenancy from year to year was originally a mere tenancy at will, on which the Courts engrafted a condition that reasonable notice should be given to determine it, which notice was ultimately settled at a half-year's.

Tenancy on sufferance.

A tenancy on sufferance is where a person who entered by a lawful title continues in possession after his estate has determined.

Lease for more than three years must be by deed.

Under the joint operation of the Statute of Frauds (*d*) and the 8 & 9 Vict. c. 106 (*e*), all leases must now be by deed, except leases not exceeding three years whereupon the reserved rent amounts to two-thirds of the full improved value.

Tenancy from year to year, how created.

A tenancy from year to year may be created by an express agreement either in writing or by parol to that effect, or it may arise by implication. Thus if one lets lands to another at an annual rent without any express provision as to the length or terms of the tenancy, the latter becomes tenant from year to year.

Lessee holding over, and paying rent, becomes tenant from year to year.

If a tenant holds over after the expiration of his lease, he is at first a mere tenant on sufferance, but if the landlord subsequently receives rent, the tenant becomes tenant from year to year, subject to such covenants and conditions in the lease as are applicable

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(*a*) Lit. 58, 67.
(*b*) Co. Lit. 45 *b*.
(*c*) 38 & 39 Vict. c. 92, sec. 51.
(*d*) 29 Car. 2, c. 3, sec. 1.
(*e*) Sect. 3.

to that species of estate (*f*), and the same rule applies where a person takes possession and pays rent under an agreement for a future lease (*g*), or under an instrument purporting to be a demise for years, but which is invalid as such, as, *e.g.*, a demise by a corporation not under seal (*h*).

Covenants to repair, to insure, and as to mode of cultivation, and a condition of re-entry on breach of covenants have been held applicable to a yearly tenancy (*i*).

Instrument void as a lease may be sued on as an agreement.

An instrument not under seal, which before the Act of Victoria would have operated as an actual demise, and which is therefore rendered void at law by that Act, may be sued on in equity as an agreement for a lease, and specific performance will be decreed (*k*), and in the meantime if the intended lessee enters and pays rent, he will become tenant from year to year upon the terms of the instrument (*l*).

Option to yearly tenant to have a lease, how long it continues.

If an agreement with a yearly tenant provides that he may at his option have a lease for a specified term, but no time is stipulated within which the option is to be exercised, the landlord may at any time call on the tenant to exercise it, and in default may determine the tenancy, but until this is done, the option continues (*kk*). And an option of this kind passes by an assignment of the tenant's interest, and if he becomes bankrupt passes to his trustee, and to a purchaser from the trustee (*ll*).

Effect of agreement by landlord not to turn out tenant so long as he pays the rent.

Sometimes an agreement purporting to create a yearly tenancy contains a clause to the effect that the landlord will not turn out the tenant so long as he pays the rent. It is clear that, having regard to the Acts above referred to, such an agreement cannot create a present interest

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(*f*) Bishop *v.* Howard, 2 B. & Cr. 100; Digby *v.* Atkinson, 4 Camp. 275; Thomas *v.* Packer, 21 Jur. 143; 26 L. J. Ex. 207; Hyatt *v.* Griffith, 17 Q. B. 505.

(*g*) Doe d. Thompson *v.* Amey, 12 Ad. & El. 476.

(*h*) Wood *v.* Tate, 2 Bos. & Pull. N. S. 247. Ecclesiastical Commissioners *v.* Merral, 4 Ex. 162.

(*i*) See cases mentioned above.

(*k*) Parker *v.* Taswell, 2 De G. & J. 559.

(*l*) Tress *v.* Savage, 4 E. & B. 36; 23 L. J. Q. B. 339; Lee *v.* Smith, 9 Exch. R. 662; 23 L. J. Ex. 198. See also Drury *v.* Macnamara, 5 El. & Bl. 612.

(*kk*) Hersey *v.* Giblett, 18 Beav. 174; Moss *v.* Barton, 1 Eq. 474.

(*ll*) Buckland *v.* Papillon, L. R. 2 Ch. 67.

beyond a yearly tenancy (*m*); but it may operate as an agreement for a lease enforceable under the equitable jurisdiction of the Court. Thus in *Brown* v. *Warner* (*n*), an agreement of this nature was considered by Lord Eldon as a valid agreement for a future lease; and in another case, where the landlord was himself only a lessee for eight years, V.-C. Malins treated the tenant as entitled in equity under such an agreement to remain in possession during the continuance of the landlord's interest (*o*). It would appear, however, from a still later case, that the lease must be limited in duration to the tenant's life (*oo*).

Mortgagor in possession, the nature of his tenancy.

A mortgagor of land in his own occupation is sometimes described as a tenant at will to the mortgagee, but it would be more correct to say that he is a tenant on sufferance, and any person who subsequently to the mortgage is let into the occupation of the property by the mortgagor is, as regards the mortgagee, in the same position (*p*). If, at the date of the mortgage, the land is in the occupation of a tenant, the mortgagee takes it subject to the tenancy, whether it be from year to year or otherwise, and if (as is usual) the mortgagor continues to receive the rent, he does so under an implied authority from the mortgagee, which authority the mortgagee may at any time countermand by notice to the tenant (*q*).

II. *The rent reserved on leases, and the remedies for its recovery.*

Rent.

The ordinary consideration for a lease is rent, or an annual return either in money or other things, reserved to the lessor. A power of distress is incident by common law to rent reserved on a lease.

(*m*) Doe d. Warner *v.* Brown, 8 East, 165; Wood *v.* Beard, 2 Ex. D. 30.

(*n*) 14 Ves. 156.

(*o*) Re King's Leasehold Estates, 16 Eq. 521.

(*oo*) Kinsel *v.* Watson, 11 Ch. D. 128.

(*p*) Keech *v.* Hall, Doug. 21; Lowe *v.* Telford, 1 App. Cas. 414.

(*q*) Moss *v.* Gallimore, Dougl. 266; Trent *v.* Hunt, 22 L. J. (N. S.) Ex. 318.

The right of distress for rent in arrear may be exercised at any time within six years from the time when the rent became due or an acknowledgment in writing of the same was made to the landlord or his agent (*r*), provided that the lease is still subsisting; and if the lease has determined, a distress may be made at any time within six calendar months from its determination, provided that the landlord's title continues and the tenant is still in possession (*s*).

Right of distress may be exercised for six years, if lease continues, and if it has determined for six months afterwards.

The executors of a deceased landlord have the same right of distress for rent accrued in his lifetime as the landlord would have had if living (*t*).

Executors of landlord have same right of distress.

The goods of a tenant cannot be taken by an execution creditor without first paying to the landlord one year's rent in arrear (*u*), but this preferential right does not exist (like the right of distress) after the tenancy has determined (*x*).

Preferential right of landlord over ordinary creditors.

If a tenant fraudulently or clandestinely conveys away goods in order to prevent the landlord from distraining them, the landlord may at any time within thirty days after such conveying away seize the goods wherever they are, and other powers are by statute given to landlords in such case (*y*).

Right of landlord to seize goods fraudulently removed.

The words "yielding and paying" in a reservation of rent amount to a covenant for payment (*yy*). Under such a covenant or the more formal one generally inserted in leases, the rent may be recovered by action at any time within twenty years after it has become due (*z*).

Rent may be recovered for twenty years by action on covenant.

According to the common law, rents reserved on a lease and other rents were not apportionable; consequently if a tenant for life made a lease otherwise than under a power, and died during a current half year of the tenancy, the whole of the rent for that half year was lost, because the lease determined on his death, and the rent could not be apportioned (*a*). Again, if a lessor settled the reversion on A. for life with remainder to B.,

No apportionment of rent by the common law.

(*r*) 3 & 4 W. 4, c. 27, s. 42.

(*s*) 8 Anne, c. 14, ss. 6, 7.

(*t*) 3 & 4 W. 4, c. 42, ss. 37, 38.

(*u*) 8 Anne, c. 14, sec. 1.

(*x*) Cox *v.* Leigh, L. R. 9 Q. B. 333.

(*y*) 11 Geo. 2, c. 19, ss. 1-10.

(*yy*) Giles *v.* Hooper, Carth. 135; Bower *v.* Hodges, 13 C. B. 765.

(*z*) 3 & 4 W. 4, c. 42, sec. 3.

(*a*) See 1 Swanston, 337, note, and the cases there cited.

and A. died during a current half year, the whole rent for that half year was payable to B.

11 Geo. 2, c. 19; 4 & 5 Will. 4, c. 22

The Acts 11 Geo. 2, c. 19, and 4 & 5 Will. 4, c. 22, were passed to remedy some of the inconveniences arising from this state of the law, but as the operation of these Acts was only partial, a more complete remedy has been lately provided by the Act 33 & 34 Vict. c. 35, by which it is enacted as follows:—

33 & 34 Vict. c. 35.

Rents to accrue from day to day and be apportionable.

Sect. 2. From and after the passing of this Act all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportioned in respect of time accordingly.

Apportioned part of rent to be payable when next entire portion becomes due.

Sect. 3. The apportioned part of any such rent, annuity, dividend, or other payment, shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment, when the entire portion of which such apportioned part shall form part shall become due and payable, and not before, and in the case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before.

Persons to have same remedies for apportioned parts as for entire portions.

Sect. 4. All persons and their respective heirs, executors, administrators and assigns, and also the executors, administrators and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies at law and in equity for recovering such apportioned parts as aforesaid, when payable (allowing proportionate parts of all such allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively; provided that persons liable to pay rents reserved out of or charged on lands or other hereditaments of any tenure, and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically, but the entire or continuing rent, including such apportioned part, shall be

Proviso as to rents reserved in certain cases.

recovered and received by the heir or other person who, if the rent had not been apportionable under this Act or otherwise, would have been entitled to such entire or continuing rent, and such apportioned part shall be recoverable from such heir or other person by the executors or other parties entitled under this Act to the same by action at law or suit in equity.

Construction of the Act.

The above Act applies to a will made before, and confirmed by a codicil made after, its passing, and (according to judicial *dicta*) to every will coming into operation after its passing (*b*). Whether it applies to an instrument made and coming into operation before its passing, is doubtful (*c*). It applies to a specific as well as a residuary devise, and under it a current half-year's rent is apportionable between the heir or the devisee of the land and the testator's personal estate (*d*).

Application of Act to an assignment of lease as regards the current quarter's rent.

In a recent case it was held that after an assignment of a lease, the lessor could recover from the assignor a proportion of the current quarter's rent up to the date of the assignment. The ground of the decision seems to have been that under section 2 the rent accrued *de die in diem*, and that the case was not within the proviso in section 4 (*e*).

Lodgers' goods protected against distress.

By a recent Act (*f*) the goods of lodgers are protected against distresses for rent due to the superior landlord. A person who hired what was substantially the whole of the house, the superior tenant only retaining a room in the basement and some attics, has been held to be a lodger within the meaning of this Act (*g*).

(*b*) Hasluck *v.* Pedley, 19 Eq. 271; Constable *v.* Constable, 11 Ch. D. 681.

(*c*) Re Cline's Estate, 18 Eq. 213. But see Jones *v.* Ogle, 8 Ch. 192.

(*d*) Capron *v.* Capron, 17 Eq. 288; Hasluck *v.* Pedley, *ubi suprà*.

The term "dividends" includes bonuses, &c. payable out of revenues of public companies, but not private partnerships.

Under the 5th sect. of the Act the term "dividends" includes all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies. But this definition does not extend to the dividends and income of a *private* partnership. Jones *v.* Ogle, 8 Ch. 192; see *In re* Griffith, 12 Ch. D. 655, as to what is a public company as distinguished from a private partnership.

(*e*) Swansea Bank *v.* Thomas, 4 Ex. D. 94.

(*f*) 34 & 35 Vict. c. 79.

(*g*) Philips *v.* Henson, 3 C. P. D. 26.

III. *The covenants usually inserted in leases in relation to rates and taxes, and the preservation, repair and insurance of the demised property.*

What are usual covenants in a lease.

The usual covenants in a lease for a term of years are, on the part of the lessee, (1) to pay the rent; (2) to pay rates and taxes; (3) to keep the demised premises in repair during the term; (4) to deliver them up in good repair and condition at the end of the term; (5) to do specific repairs on notice; and (6) to insure against fire, if this is intended and stipulated for. If the lease is of a farm, there are generally covenants as to cultivation. Other covenants are often stipulated for, but cannot be insisted on upon an open contract. These will be considered in a subsequent section.

Rates and taxes.

General covenant to pay rates and taxes without exception, includes sewers rate and land-tax, but not the landlord's property tax.

A covenant to pay "all rates, taxes and assessments payable for or in respect of the demised premises," without any exception, includes not only ordinary rates payable by the tenant, but also taxes and assessments imposed by Parliament and which in the absence of agreement a tenant is allowed to deduct from his rent, *e.g.*, sewers rate and land-tax (*h*). The property or income-tax is however an exception, as it is provided by the Act imposing it that the tenant is to deduct it from the rent, and that no contract, covenant or agreement between landlord and tenant or any other persons touching the payment of taxes and assessments to be charged on their respective premises shall be deemed to extend to property or income-tax, nor be binding contrary to the true intent and meaning of the Act (*i*).

Nor tithe rent-charge.

Tithe rent-charge is not a tax or assessment, and is

(*h*) Amfield *v.* White, 1 Ry. & Mo. 246; Brewster *v.* Kidgell, 12 Mod. 166; Bradbury *v.* Wright, Dougl. 624.

(*i*) 5 & 6 Vict. c. 35, s. 60, sch. A. No. 4, rule 9; see also sec. 73.

therefore not included in a general covenant to pay rates, taxes, and assessments (*k*).

Nor to charges thrown by Act of Parliament on the owner, but *secus*, if the covenant extends in terms to all assessments and charges imposed on the landlord in respect of the premises.

Nor does a covenant in the above form apply to charges thrown by an Act of Parliament on the owner, although as an additional security power is given to levy it against the tenant, *e.g.*, the expense of paving and sewering a street or abating a nuisance under a local Act (*l*). But if the terms of the covenant are to pay all taxes, assessments, &c. imposed *on the landlord* or tenant in respect of the premises, charges of this kind are within the covenant (*m*).

The preservation, repair, and insurance of the demised property.

Tenant liable for actual waste

Every tenant for a term of years or from year to year or at will is liable at law for actual waste, *e.g.*, pulling down houses or walls, cutting timber, cutting fruit-trees in a garden or orchard, opening mines, altering the nature of the property by converting meadow into arable, &c. (*n*). But no action of waste will lie, unless there is injury to the inheritance in one of the following ways, viz., by diminishing the value of the estate, or increasing the burden on it, or destroying identity and thus impairing the evidence of title (*o*). Thus it is not waste to erect new buildings whereby the value of the estate is increased (*p*), or to pull down a ruinous barn without rebuilding it, if the estate is not injured thereby (*q*).

if there is any injury to the inheritance.

Action may be brought by reversioner.

An act of waste by a tenant is a present injury to the reversion, for which the lessor may bring an action during the term (*r*).

(*k*) Jeffrey *v.* Neale, L. R. 6 C. P. 240. But see Parish *v.* Sleeman, 1 D. F. & J. 326, where tithe rent-charge was held an "outgoing," the agreement being to pay the rent "free of outgoings."

(*l*) Tidswell *v.* Whitworth, L. R. 2 C. P. 326; Rawlins *v.* Briggs, 3 C. P. D. 368; Altum *v.* Dickinson, W. N. 1882, p. 101.

(*m*) Thompson *v.* Lapworth, 3 C. P. 149; Hartley *v.* Hudson, 4 C. P. D. 367.

(*n*) Co. Lit. 53*a*.

(*o*) Doe d. Grubb *v.* Burlington, 5 B. & Ad. 507. The head of destroying identity has been brought within very narrow limits in modern times. See Doherty *v.* Allman, 3 App. Cas. 735.

(*p*) Jones *v.* Chappell, 20 Eq. 539.

(*q*) Doe d. Grubb *v.* Burlington, *ubi suprà*.

(*r*) Queen's Coll. Oxford *v.* Hallett, 14 East, 489; Corporation of London *v.* Hedger, 18 Ves. 355.

Liability of tenant from year to year or under a lease as regards repairs.

A tenant from year to year is bound to keep the premises wind and water tight, but not to do general repairs, and he is not liable for permissive waste (*rr*). It is apprehended that, in the absence of special agreement, the liability of a tenant for a term of years is the same as that of a tenant from year to year (*s*), but the point is not of much practical importance, as covenants by the lessee to do repairs are an ordinary part of a lease.

Construction of covenants to repair.

Under a general covenant by a lessee to keep the premises in good repair and to deliver them up in good repair and condition at the end of the term, it is not sufficient to keep them in the same state of repair as they were in at the commencement, if they were then in bad repair. The class and description of the house may however be taken into account, viz., whether it is an old or a new one, and it must be kept and delivered up in good repair with reference to the class to which it belongs (*t*). The rule is difficult of application.

No warranty by landlord as to condition of unfurnished house.

A tenant who is under no obligation to do repairs, cannot require the landlord to do them, nor is it any defence to an action by the landlord for rent, that the house is uninhabitable for want of substantial repairs (*u*), or by reason of its being infested with noxious insects, or for any other reason, there being no implied condition in a demise of an unfurnished fabric of a house that it is in a reasonably fit state and condition for habitation (*x*).

Secus, when house is let furnished.

But a different rule applies to a *furnished* house; in which case there is an implied condition that it is fit for occupation, and that the tenant may rescind the contract on the ground that it is infested by bugs, or unwholesome for want of proper drainage (*y*).

(*rr*) Ferguson *v.* ——, 2 Esp. 590; Amworth *v.* Thomas, 5 Car. & P. 239; Leach *v.* Thomas, 7 *ib.* 327.

(*s*) See Herne *v.* Benbow, 4 Taunt. 764; Powys *v.* Blagrave, 4 D. M. & G. 458. *Contrà*, Yellowly *v.* Gower, 24 L. J. Ex. 289.

(*t*) Gutteridge *v.* Munyard, 1 M. & Rob. 334; Stanley *v.* Towgood, 3 Bing. N. C. 4; 6 L. J. (N. S.) C. P. 129; Brown *v.* Trumper, 26 Beav. 11; Payne *v.* Haine, 16 M. & W. 541; 16 L. J. Ex. 130; Easton *v.* Pratt, 33 L. J. Ex. 233.

(*u*) Arden *v.* Pullen, 10 M. & W. 321; 11 L. J. (N. S.) Ex. 359; Gott *v.* Gandy, 23 L. J. Q. B. 1.

(*x*) Hart *v.* Windsor, 12 M. & W. 61.

(*y*) Smith *v.* Marrable, 11 M. & W. 5; Wilson *v.* Finch Hatton, 2 Ex. D. 336.

Liability of tenant in case of fire.

As regards destruction by fire, it is provided by the statute 14 Geo. 3, c. 78, s. 86, that no action, suit, or process shall be had or prosecuted against any person in whose house or building or on whose estate any fire shall *accidentally* begin, or any recompense be made by such person for any damage suffered or occasioned thereby, but agreements between landlord and tenant are excepted. In the absence, therefore, of any special stipulation, the lessee is not bound to rebuild a house accidentally burnt down, but if he enters into a general covenant to repair, without any exception, he is liable to restore any house or buildings which may be destroyed by fire, tempest, lightning, or any other accident (*z*). It should be borne in mind also that a fire caused by negligence has been held not to be accidental within the meaning of the above enactment (*a*), and bearing in mind how often fires are the result of carelessness on the part of servants, a prudent tenant will either insure himself or see that his landlord does so.

In absence of stipulation, lessee not bound to rebuild in case of fire, but he must do so under general covenant to repair.

Where there is no obligation on either party to insure, the lessee remains liable for his rent although the house has been burnt down (*b*), and it has been held that he has no equity to compel the lessor to expend the money received from an insurance office in rebuilding (*c*). But these decisions must be taken in connection with sect. 83 of 14 George 3, c. 78, which authorizes and requires directors of insurance offices, on the request of *any person interested* in or entitled unto any houses or buildings which may be burnt down or damaged by fire, to cause the insurance money to be laid out in re-building (*d*). It would seem, therefore, that if in the above-mentioned cases the lessee had required the directors of the insurance company before they paid over the money

In absence of stipulation lessee liable to rent although house has been burnt down.

(*z*) 2 Saund. Rep. by Williams, 422 n.; Pym *v.* Blackburn, 3 Ves. 34.

(*a*) Filliter *v.* Phippard, 11 Q. B. 347, 17 L. J. Q. B. 89.

(*b*) Belfour *v.* Weston, 1 T. R. 310; Holzapffell *v.* Baker, 18 Ves. 115.

(*c*) Leeds *v.* Cheetham, 1 Sim. 146; Loft *v.* Dennis, 28 L. J. Q. B. 169. The case of Steele *v.* Right, cited in 1 T. R. 708, and the dictum in Brown *v.* Quilter, Amb. 619, contrary to the statement in the text, must be considered to be overruled.

(*d*) It has been held that this provision is a general enactment, and not limited in its operation to the metropolitan districts. *Ex parte* Goreley, 34 L. J. Bankruptcy, 1.

to the lessor, to apply it in rebuilding, they would have been bound to do so (*e*).

Proper form of covenant by lessee for insurance.

It follows from the foregoing observations that a lease should expressly provide for insurance. If it is arranged that the lessee shall insure, the covenant should state in whose name the insurance is to be. It should also name the office or provide that the office shall be one approved by the lessor, and the lessee should be bound to produce the policy and the receipts for the premiums.

Construction of covenant.

It has been held that a covenant to insure in the joint names of the lessor and lessee is substantially performed, if the insurance is in the name of the lessor only (*f*), but a covenant to insure in the name of the lessor is broken by the lessee adding his own name (*g*).

Covenants to insure in underlease.

In the case of an underlease where the sub-lessor is himself bound to insure, the covenant in the underlease, if entered into by the under-lessee, should of course be made to correspond with that in the superior lease. Sometimes the arrangement is that the under-lessor shall continue to insure as required by the superior lease, and an additional rent is reserved equal in amount to the annual premium.

Where lessee does not insure, damage by fire should be excepted from general covenant to repair.

If it is not intended that the lessee shall insure, the covenant by him to repair should except accidents by fire, and of course if it is intended that any of the repairs should be done by the lessor, this should be expressly provided for.

Covenants in farm leases.

In farm leases, covenants as to cultivation are usually inserted with the object of preventing the land from being impoverished, or the farm otherwise deteriorated by bad or negligent farming.

(*e*) Simpson *v.* Scottish, &c. Compy., 23 L. J. Ch. 329.

(*f*) Havens *v.* Middleton, 10 Hare, 641.

(*g*) Penniall *v.* Harborne, 11 Q. B. 368.

IV. *Covenants restrictive of the use of the premises demised and covenants against assignment or underletting without consent.*

Covenant not to carry on trades.

A lease of a house often provides that the lessee shall not carry on particular trades on the premises. A covenant that the premises shall be used as a private dwelling-house only, is broken by permitting the house to be used as a school (*h*) or charitable institution for the board and education of children (*i*).

A covenant prohibiting the use of premises as a public-house, or a beer-house, is not broken by the sale of beer, in retail, to be drunk off the premises, the terms "public-house" and "beer-house" having acquired a technical sense (*j*); but if the term "beer-shop" is used, a sale to be drunk off the premises is a breach of the covenant (*jj*); and it has been decided that for a grocer to sell wine or spirits in bottles is a breach of covenant "not to use premises for the sale of spirituous liquors" (*k*), but is permitted under a covenant "not to carry on the trade of a seller of wine and spirituous liquors" (*l*).

Covenant not to assign or underlet, without lessor's consent.

Construction of such a covenant.

A lease frequently contains a covenant not to assign or underlet without the lessor's consent. It is generally considered that such a covenant does not prevent a bequest by will (*m*). Nor does it extend to a deposit of a lease by way of security (*mm*), nor to an alienation by operation of law, *e.g.*, by bankruptcy or by judgment, even where the judgment is preceded by a warrant of attorney given by the debtor (*n*), and a trustee in bank-

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(*h*) Wickenden *v.* Webster, 25 L. J. Q. B. 264.

(*i*) German *v.* Chapman, 7 C. D. 271.

(*j*) Pearse *v.* Coats, L. R. 2 Eq. 688. London and North Western Railway Company *v.* Garnett, *ib.*, 9 Eq. 26; Holt *v.* Collyer, 16 C. D. 718; Nicoll *v.* Fleming, 19 C. D. 258.

(*jj*) Bishop of St. Alban's *v.* Battersby, 3 Q. B. D. 359; London, &c. Compy. *v.* Field, 16 Ch. D. 645.

(*k*) Fielden *v.* Slater, L. R. 7 Eq. 523.

(*l*) Jones *v.* Bone, L. R. 9 Eq. 674.

(*m*) Fox *v.* Swann, Sty. 482; Doe d. Bevan, 3 M. & S. 353. The dicta to the contrary in the earlier cases, Knight *v.* Mory, Cro. Eliz. 60; Bury *v.* Stanton, *ib.* 330, must be deemed overruled.

(*mm*) Doe d. Pitt *v.* Hogg, 4 D. & Ry. 226.

(*n*) Doe d. Curtis, 8 T. R. 57; Croft *v.* Lumley, 5 El. & Bl. 682; 25 L. J. Q. B. 223.

ruptcy having become entitled by operation of law may afterwards sell and assign in the discharge of his duty without its being a breach of the covenant (*o*). But the executor or administrator of a lessee is bound by the covenant, if expressly named in it (*p*).

Underlease not a breach of covenant against assignment.

An underlease is not a breach of a covenant not to assign (*q*), but a covenant "not to let, set, or demise for all or any part of the term" has been held to prohibit an assignment (*r*). And it is apprehended that the decision in the case last referred to would have been the same without the words "for all or any part of the term," as it is difficult to suppose that a lessor could intend to restrain an underlease, but allow an absolute assignment. An assignment by one of two joint tenants to the other is a breach of such a covenant (*s*).

Assignment by one joint tenant to the other.

Covenant not to assign, &c., cannot be insisted on under an open contract.

A covenant not to assign without consent, though common, is not an usual and proper one in the sense that it can be insisted on under an open contract (*t*). And, indeed, considering how a covenant of this kind can be made an instrument of oppression in the hands of an unscrupulous landlord, it is surprising that its insertion without qualification is so readily assented to. Its legitimate object is to secure a responsible tenant, and it is therefore reasonable to insist on some qualifying words being added, confining its operation to this end. Sometimes this is done by adding "such consent not to be unreasonably or vexatiously withheld," or "such consent not to be withheld if the proposed assignee is a responsible and respectable person." If words of this kind are added, they do not amount to a covenant by the lessor, but if he refuses his consent improperly, the lessee may assign without it (*u*).

(*o*) Goring *v.* Warner, 2 Eq. Ab. 100; Doe d. Bevan, 3 M. & S. 353.

(*p*) Roe d. Gresson *v.* Harrison, 2 T. R. 425.

(*q*) Crusoe d. Blencowe *v.* Bugby, 2 Wm. Bl. 766.

(*r*) Greenaway *v.* Adams, 12 Ves. 395.

(*s*) Varley *v.* Coppard, L. R. 7 C. P. 505. See also Corp. of Bristol *v.* Westcott, L. R. 12 Ch. D. 461.

(*t*) Church *v.* Brown, 15 Ves. 258; Buckland *v.* Papillon, L. R. 1 Eq. 477; Hodgkinson *v.* Crowe, L. R. 19 Eq. 591; Hampshire *v.* Wickens, *ib.* 7 Ch. D. 555.

(*u*) Treloar *v.* Bigge, L. R. 9 Exch. 151; Evans *v.* Davis, 10 Ch. D. 747; Sears *v.* House Property, &c. Socy., 16 Ch. D. 387.

A covenant not to assign without consent runs with the land so as to bind an assignee at law.

Runs with the land.

The measure of damages in an action for breach of the covenant is such a sum of money as will put the plaintiff in the same position as if he had still the defendant's liability instead of the liability of one of inferior pecuniary means for past and future breaches (*x*).

Measure of damages on breach of covenant.

V. *The condition of re-entry, and the relief afforded by equity against a forfeiture thereunder.*

The lessee's covenants are usually followed by a proviso or condition enabling the lessor to re-enter in case the rent remains unpaid for a certain time, or in case of a breach of the lessee's covenants, but such a condition could not be insisted on, in the absence of stipulation (*xx*).

Proviso for re-entry.

Before a landlord could re-enter for non-payment of rent, he was, by the common law, obliged to make an actual demand, and in making such demand a number of troublesome formalities were necessary (*y*). By the Common Law Procedure Act, 1852, sect. 210 (*z*), the service of a writ of ejectment is substituted for an actual demand and re-entry; but a lessor cannot recover under this statute without showing that a half-year's rent was due before the writ was served, and that no sufficient distress could be found on the premises (*a*). It is usual to provide in the condition for re-entry, that the lessor may re-enter for non-payment of rent, whether the same shall have been legally demanded or not. Words to that effect will dispense with the necessity of making a legal demand, or of proving that no sufficient distress can be found (*b*). If the lease or agreement expressly requires that the rent shall be demanded before a re-entry, the demand need not be accompanied by the Common Law formalities (*c*),

Demand of rent necessary at common law.

(*x*) Williams *v.* Earle, L. R. 3 Q. B. 739.

(*xx*) Hodgkinson *v.* Crowe, L. R. 10 Ch. 622.

(*y*) See 1 Saund. 287 n. 16.

(*z*) This sect. seems to be substituted for sect. 2 of 4 Geo. 2, c. 28.

(*a*) See Doe d. Foster *v.* Wandlass, 7 T. R. 117.

(*b*) Doe d. Harris *v.* Masters, 2 B. & C. 490.

(*c*) Doe d. Schofield *v.* Alexander, 2 M. & S. 525.

but it must not be made until the expiration of the time allowed for payment (*d*).

Forfeiture waived by acceptance of rent with notice.

A forfeiture, whether for non-payment of rent or for a breach of covenant, will be waived by a subsequent acceptance of rent, provided that the lessor at the time of such acceptance have notice of the forfeiture; and a distress or action for rent which has accrued subsequently to the breach constituting the forfeiture is a waiver (*e*). The acceptance of rent is, however, no waiver of forfeiture in respect of subsequent acts or omissions in breach of the same covenant (*f*).

Equity will relieve against forfeiture for non-payment of rent.

It has been long settled that equity will relieve against a forfeiture for non-payment of rent (*g*). By the Common Law Procedure Act, 1852 (*h*), a tenant may stay all further proceedings against him by paying the arrears of rent and costs to the landlord or into Court, and by the same Act it is provided that a lessee against whom judgment and execution have been had in action of ejectment for non-payment of rent must proceed for relief in equity within six months after execution; and in case he proceeds in equity within that time, he must, in order to have or continue an injunction against the proceedings at law, bring into Court the arrears of rent and the amount of the taxed costs at law within forty days after the lessor's answer (*i*).

Formerly Court had no jurisdiction to relieve against forfeiture for breaches of covenant. Jurisdiction conferred by recent Act.

Until recently, the Court had no jurisdiction to relieve the lessee from the consequences of a breach of the covenants other than the covenant for nonpayment of rent. But such a jurisdiction has now been conferred by section 14 of the Conveyancing Act, 1881, which provides as follows:—

Restrictions on and relief against forfeiture of leases.

(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease, shall not be enforceable, by action

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(*d*) Philips *v.* Bridge, L. R. 9 C. P. 48.

(*e*) Dendy *v.* Nichol, 27 L. J. C. P. 220. See also Cotesworth *v.* Spokes, 30 L. J. C. P. 220.

(*f*) 4 Jarm. Conv. by Sweet, 366.

(*g*) Wadman *v.* Calcraft, 10 Ves. 67.

(*h*) Sects. 210, 211.

(*i*) There is a similar provision in 4 Geo. 2, c. 28, s. 2. See Bowser *v.* Colby, 1 Hare, 109.

or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring him to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

Less~~or~~ee may apply to Court for relief.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

Definition of term "lease."

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue so long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such breach.

Exceptions.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Before recent Act, an intended lessee under an agreement could not obtain specific performance if he had done act creating a forfeiture.

As before the recent Act a breach of covenant by an actual lessee would, as a general rule, have involved a forfeiture under the condition of re-entry without any right to equitable relief, it followed that where there was an agreement for a lease, such lease to contain the usual condition of re-entry, and the intended lessee having taken possession under it, committed acts which had the lease been actually granted would have involved a forfeiture, he could not claim specific performance of the agreement (*t*). And in a case where a lessor entered into a covenant in the nature of a covenant for perpetual renewal, provided the rent should have been paid and the covenants kept, and the lessee committed a breach of the covenants to repair and insure, it was held that a court of equity could not compel the lessor to renew, nor restrain him from ejecting the lessee (*u*).

Court has now jurisdiction to relieve in case of agreements as well as actual

The jurisdiction conferred by the Act of 1881 extends no doubt to agreements for leases, and the Court would now, it is apprehended, decree specific performance of an agreement for a lease, notwithstanding wrongful

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(*t*) Gregory *v.* Wilson, 9 Hare, 683; Lewis *v.* Bond, 18 Beav. 85; Rankin *v.* Lay, 2 D. F. & J. 65.

(*u*) Job *v.* Bannister, 2 K. & J. 374.

acts or omissions of the intended lessee, upon similar terms as regards compensation to the lessor and other matters as if an actual lease had been made and the lessee was applying for relief against a forfeiture on account of such acts.

leases, *semble.*

VI. *The effect of alienation by the lessor or lessee as regards the rent and the covenants and conditions of the lease.*

A rent reserved on a lease is by common law incident to the reversion and passes with it on every devolution or alienation. And if the reversion of part of the land comprised in a lease is aliened, the rent is apportionable at common law (*x*).

Rent follows reversion, and is apportionable on a partial alienation.

The benefit of and obligation under the covenants and conditions in a lease did not, however, pass at common law to a grantee of the reversion. This is remedied by the stat. 32 Hen. 8, c. 34, which provides that "all grantees of reversions shall enjoy all advantages, benefits and remedies by action for non-performance of conditions, covenants, or agreements contained or expressed in leases, which the grantors or lessors themselves had or enjoyed," and also gives a right of action to the lessee against grantees of the reversion.

Benefit of and liability under covenants and conditions made to pass with reversion by statute.

The stat. 22 & 23 Vict. c. 35 (*y*), gives to the assignee of the reversion of part of the lands comprised in a lease where the rent has been legally apportioned the benefit of all conditions and powers of re-entry for non-payment of the rent in like manner as if such conditions or powers had been reserved to him in respect of such apportioned rent.

On alienation of reversion of part of demised land, condition of re-entry for non-payment of rent is available for apportioned part.

The above enactment applied to the rent only. If the reversion was severed, the right of re-entry on breach of covenants could not be enforced by the grantee of part (*z*), unless the grant of part was to the lessee himself so as to cause an extinguishment, in which case the right of

But condition is gone, as regards breach of covenants, except where lessee himself is alienee.

(*x*) Co. Lit. 148 *a.*

(*y*) Sec. 35.

(*z*) Knight's case, 5 Co. 54 *b.*

re-entry remained intact over that part which remained in the lessor (*a*).

The Conveyancing Act, 1881, contains the following provisions, applicable only to leases made after the 31st December, 1881.

Rent and benefit of lessee's covenants to run with reversion.

Sect. 10. Rent reserved by a lease and the benefit of every covenant or provision therein contained having reference to the subject matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

Obligation of lessor's covenants to run with reversion.

Sect. 11. The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to make the lease binding against the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Apportionment of conditions on severance, &c.

Sect. 12. Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condi-

(*a*) Hyde *v.* Warden, 3 Ex. D. 72.

> tion or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

Dumpor's Case.

Law established by *Dumpor's case* altered by 22 & 23 Vict. c. 35.

It was formerly a rule of law that if a condition was once dispensed with, it was gone for ever. As a consequence of this principle, it was held in *Dumpor's Case* (*b*), that a condition not to alien without licence was determined by the first licence given. This doctrine is now abolished by the Act 22 & 23 Vict. c. 35, which provides in effect that a licence to do any particular act which, without such licence, would create a forfeiture, shall extend only to that act, and that a licence to one of several co-lessees shall not destroy the condition as against the other co-lessees, and that a licence to assign, &c., part of the property shall not destroy the condition as to the rest of the property (*c*).

Mortgagor in possession may sue for rent.

A conveyance of the reversion by way of mortgage of course passes to the mortgagee the right to the rent and to the benefit of all covenants and conditions. But as it is usual for the mortgagee to permit the mortgagor to remain in possession, the Judicature Act, 1873 (*d*), provides that a mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession or for the recovery of such rents or profits or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own

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(*b*) 4 Co. Rep. 119 *b*.

(*c*) Secs. 1, 2.

(*d*) Sect. 25, sub-sect. 5.

name only unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Whether lessor can assign right of entry already accrued.

It seems doubtful whether under the stat. 8 & 9 Vict. c. 106, sec. 5, a lessor can pass to his assignee the right to enter for a breach already committed of the lessee's covenants; at all events, such a right will not pass by the assignment of the reversion, unless expressly mentioned (*e*).

Effect of destruction of mesne reversion.

As the right to the rent and to sue on the covenants follows the reversion, it was formerly important, where a lease was made by a person who was himself only a termor, or had otherwise a limited interest, that the term or other interest constituting his reversion should not be merged or surrendered. For example, if lands were held by A. for life or for years, with remainder to B., and A. made a lease and afterwards surrendered his estate to B. or took a conveyance from B. which had the effect of merging his (A.'s) estate, the consequence was that the immediate reversion on the lease being gone, the rent and the benefit of the covenants were gone also.

8 & 9 Vict. c. 106, s. 9.

To remedy this, it is provided by 8 & 9 Vict. c. 106, s. 9, that in case of the merger or surrender of the reversion expectant on a lease, the estate conferring, as against the tenant under the same lease, the next vested right to the same hereditament, shall for the purpose of preserving the incidents to such extinguished reversion, be deemed the reversion expectant on the lease.

VII. *By what modes otherwise than by forfeiture, a tenancy may be determined; and the rights of the parties at the determination thereof, as regards emblements, fixtures, compensation for improvements and other matters.*

Lease for term determines by effluxion of time.

A lease for a term certain of course determines at the expiration of the term, and no notice to quit is necessary.

(*e*) Crane *v.* Batten, 23 L. T. R. 220; Hunt *v.* Remnant, 9 Exch. 635, 23 L. J. Ex. 135.

It has been before observed that (except in cases within section 51 of the Agricultural Holdings Act, 1875) a tenancy from year to year continues until it is put an end to by a half-year's notice to quit from one of the parties, and that such notice must expire at the period of the year at which the tenancy commenced. And if a tenancy from year to year has arisen from the tenant having held over on the expiration of his lease or original tenancy, the general rule is that the notice must expire at the period of the year at which the original term commenced (*f*). If the tenant dies during the tenancy, his executor or administrator has the same interest in the land as the deceased had, and the same notice to quit is therefore necessary (*g*).

Notice to quit necessary to determine tenancy from year to year.

Executors of tenant entitled to notice to quit.

A half-year's notice to quit is necessary whether the rent be reserved half-yearly or quarterly (*h*).

An acceptance of rent due after the expiration of a notice to quit is a *primâ facie* waiver of the notice, as it shows the intention of both parties to continue the tenancy; so also if the landlord distrains for or demands the rent, he *primâ facie* affirms the continuance of the tenancy; but the presumption of waiver may be rebutted, and it is a question for the jury, and not for the Court, whether, under the circumstances of the case, the notice has been waived (*i*).

Notice to quit *primâ facie* waived by acceptance or demand of rent.

Section 51 of the Agricultural Holdings Act, 1875, provides that where a half-year's notice to quit expiring with a year of tenancy is by law necessary and sufficient for the determination of a tenancy from year to year, a year's notice so expiring is to be necessary and sufficient. It has been held that this clause does not apply to a yearly tenancy which by express agreement of the parties is determinable by six months' notice to quit (*j*).

Sec. 51 of "Agricultural Holdings Act" does not apply where six months' notice is expressly required.

A tenancy at will may be determined at any time by the tenant delivering up possession, or by the landlord

Tenancy at will, how determined.

(*f*) Doe d. Collins *v.* Weller, 7 T. R. 478; Berry *v.* Lindley, 3 M. & G. 498; Kelly *v.* Patterson, L. R. 9 C. P. 681.

(*g*) Doe d. Shore *v.* Porter, 2 T. R. 13.

(*h*) Spirley *v.* Newman, 1 Esp. 266.

(*i*) Blyth *v.* Bennett, 13 C. B. 178.

(*j*) Wilkinson *v.* Calvert, 3 C. P. D. 360.

demanding such possession, and no notice to quit is necessary (*k*).

Tenancy on sufferance, how determined.

A tenant on sufferance is a mere trespasser, and the landlord may at any time enter and put an end to the tenancy without making any previous demand.

Surrender. Express surrender must be by deed.

A lease or tenancy may be determined by surrender, express or implied. An express surrender requires a deed, unless the estate surrendered is one that can be created by parol (*kk*).

Surrender at law.

A surrender by act and operation of law arises where a lessee accepts a new lease commencing immediately, or which is otherwise inconsistent with the continuance of the first lease. The acceptance of such new lease is an implied surrender of the first lease, and this is the case, although the second lease may be of shorter duration than the first (*l*). And a new letting to a third party, with the assent of the original tenant, has the same operation (*m*).

Effect of disclaimer by trustee of bankrupt lessee, as regards (1) the bankrupt, and (2) third parties.

By the Bankruptcy Act, 1869, sec. 23, the trustee of a bankrupt is authorized to disclaim onerous property, and it is provided that when the property so disclaimed is a lease, it shall be deemed to have been surrendered on the day of the date of the order of adjudication. It has been held that a disclaimer under the above enactment operates as a surrender so far only as is necessary to relieve the bankrupt and his estate from liability, but does not otherwise affect the rights or liabilities of third parties. Consequently, if the bankrupt has granted an underlease, the rights of the lessor against the property in the hands of the underlessee remain in force; he may therefore distrain for the rent reserved by the original lease, although it exceeds that reserved by the underlease, and may re-enter under the condition of re-entry for nonpayment of that rent or for breach of the covenants in the original lease (*ll*). And if the bankrupt

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(*k*) Right d. Lewis *v.* Beard, 13 East, 210.

(*kk*) 8 & 9 Vict. c. 106, s. 3.

(*l*) Hughes *v.* Rowbotham, Cr. Eliz. 302.

(*m*) Thomas *v.* Cook, 2 B. & A. 119; Graham *v.* Whichelo, 1 C. & M. 188; Macdonnell *v.* Pope, 9 Hare, 705; Davidson *v.* Grant, 1 H. & N. 744.

(*ll*) *Ex parte* Walton, 17 Ch. D. 746.

is an assignee of the lease, a disclaimer by his trustee does not prevent the lessor from suing the original lessee under the covenants, and if he does so, the lessee's only remedy is an application to the Court under the last paragraph of sec. 23 (*mm*).

Leases may be renewed without surrender of underleases.

The stat. 4 Geo. 2, c. 28, s. 6, enables leases to be renewed without the surrender of any underleases derived out of the old lease, and saves to the lessee under the new lease and to the underlessees the same mutual rights and remedies as if the old lease had been still in existence.

Tenant holding over after demand of possession to pay double annual value of premises.

By the same stat., s. 1, it is enacted that "if any tenant for life or lives, or years, holds over any lands, &c., after the determination of his estate, after demand made and notice in writing given, for delivering the possession thereof, by the landlord, &c., or his agent thereunto lawfully authorized, such tenant so holding over shall pay to the person so kept out of possession at the rate of double the yearly value of the lands so detained for so long a time as the same shall be detained." And by stat. 11 Geo. 2, c. 19, s. 18, it is enacted that "in case any tenant shall give notice of his intention to quit the premises, and shall not accordingly deliver up the possession thereof at the time in such notice mentioned, the said tenant shall thenceforth pay to the landlord double the rent which he should otherwise have paid."

Tenant holding over after expiration of his notice to quit, to pay double rent.

Holding over must be contumacious.

To enable a landlord to recover double value under the 4 Geo. 2, c. 28, the holding over by the tenant must be contumacious. Thus in a recent case A., a tenant of B., after the death of B. accepted a fresh term from his devisee. He afterwards found that the heir of B. disputed the will, and from the circumstances of the case he reasonably and *bonâ fide* believed that the devisee had no title, and that the land belonged to the heir-at-law. A. thereupon refused to pay rent to the devisee, who gave him notice to quit. As A. did not quit at the expiration of the notice, the devisee, who had esta-

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(*mm*) Smyth *v.* North, 7 Ex. 242. See *Ex parte* East & West India Dock Compy., 17 Ch. D. 759, 22 *ib.* 14.

blished her title, brought an action against him for the double value for wilfully holding over. It was held that the action was not maintainable, as to come within the Act the holding over must be with the consciousness on the part of the tenant that he has no right to retain possession (*n*).

What damages may be recovered against tenant holding over.

In a recent case, a landlord, after giving a yearly tenant notice to quit at the end of his year, agreed to let the land to A. from the end of the year, and informed the tenant that he had done so, but the tenant nevertheless held the premises over for another quarter. It was held that the landlord might recover against the tenant as damages the amount of the ordinary damages which he had had to pay in an action brought against him by A. for not giving him possession at the time agreed on and the cost of such action. It was also held that the fact of the landlord having received from the tenant rent for the quarter during which he held over did not preclude him from bringing the action (*o*).

Emblements.

Where a lease or tenancy is for an uncertain period, and determines after the crops are sown and before harvest, the tenant is as a general rule entitled to the crops, or (as they are usually called) to emblements, but if the lease is for a term certain, the tenant has no such right (in the absence of special custom), for it is his own fault if under such circumstances he sows the crops.

On death of landlord entitled for life, tenancy continues up to end of current year.

It is now provided by the 14 & 15 Vict. c. 25, s. 1, that where a lease held by a tenant at rack rent shall determine by the death or the cesser of the estate of the landlord entitled for his life, or any other uncertain interest, instead of emblements the tenant shall continue to hold and occupy the lands until the expiration of the then current year of his tenancy, and shall then quit upon the terms of his lease or holding in the same manner as if such lease or tenancy were determined by effluxion of time or other lawful means during the continuance of the landlord's estate; and the succeeding

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(*n*) Swinfen *v.* Bacon, 30 L. J. Ex. 33, 368.

(*o*) Bramley *v.* Chesterton, 2 C. B. (N. S.) 592; 27 L. J. C. P. 23.

landlord or owner is empowered to receive and recover from the tenant a due proportion of the rent for the period which shall have elapsed from the death or cesser of the estate of the previous landlord or owner.

The above Act applies to all tenancies in respect of which there may be a claim to emblements (*p*).

Law of emblements applies between heir and executors.

The right to emblements is not confined to the case of landlord and tenant. Thus if a tenant in fee dies before harvest the then growing crops will go to his executors, though if he has devised the land, the devisee will be entitled to the crops as against the executor (*q*). And where the estates of persons having only limited interests determine by their deaths before harvest, the emblements will go to their personal representatives.

Fixtures, general law as to.

Exception in case of trade and ornamental fixtures.

The general law as to things annexed to the freehold is that they become part of it and cannot be severed by a tenant without the consent of the landlord. But an exception to this general law has long been established in the case of fixtures set up for the purposes of trade (*r*), or for purposes of ornament or convenience; as, for example, marble or other ornamental chimney-pieces, marble slabs, grates, or stoves, or the like, provided that they can be separated from the freehold without any material injury (*s*).

Agricultura fixtures.

Recent statutes have conferred on tenants of farms special rights with regard to what may be called agricultural fixtures. Thus the Act 14 & 15 Vict. c. 25, sec. 3, provides "that if any tenant of a farm or lands shall, *with the consent in writing of the landlord*, at his own cost and expense, erect any farm-building, either detached or otherwise, or put up any other building, engine, or machinery either for agricultural purposes or for the purposes of trade and agriculture (which shall not have been erected or put up in pursuance of some obligation

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(*p*) Haines *v.* Welch, L. R. 4 C. P. 91.

(*q*) Cooper *v.* Woolfitt, 2 H. & N. 122.

(*r*) Poole's case, 1 Salk. 368; Lawton *v.* Lawton, 3 Atk. 13; Dean *v.* Allaby, 3 Esp. 11; Fitzherbert *v.* Shaw, 1 H. Bl. 528.

(*s*) See Buckland *v.* Butterfield, 2 B. & B. 75. See generally on the subject of fixtures, Amos and Ferard on Fixtures; also Elwes *v.* Mawe, 2 Smith, L. C. 99.

in that behalf), then all such buildings, engines, and machinery, shall be the property of the tenant, and shall be removable by him, notwithstanding the same may consist of separate buildings, or that the same, or any part thereof, may be built in or permanently fixed to the soil, so as the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise do put the same in like plight and condition, or as good plight and condition as the same were in before the erection of anything so removed." But the tenant is bound before any such removal to give a month's notice to the landlord or his agent, and the landlord may elect to purchase the matters and things proposed to be removed at a valuation.

And the Agricultural Holdings Act, 1875, contains provisions conferring further rights on tenants with regard to fixtures in the case of holdings subject to that Act, which provisions will be mentioned afterwards in connection with the other provisions of that Act.

Tenant's fixtures, when they must be removed.

As a general rule the tenant must in the absence of any express stipulation on the subject, remove fixtures during the term, otherwise they belong to the landlord (*t*); and this rule equally applies, when the tenancy is determined by the lessor re-entering for a breach of covenant (*u*). If, however, the tenant is allowed to remain in possession after the expiration of the term, it would seem that he may at any time while so remaining in possession remove fixtures which he might have removed during the term (*x*). And in *Weeton* v. *Woodcock* (*y*), the rule was thus stated, that the tenant's right to remove fixtures continues during his original term, and during such further period of possession by him, as he holds the premises under a right still to consider himself a tenant (*z*). The trustee of a bankrupt having disclaimed the lease cannot afterwards re-

Effect of disclaimer by trustee of bankrupt

(*t*) Leader *v.* Homewood, 5 C. B. (N. S.) 546; 27 L. J. C. P. 316.

(*u*) Pugh *v.* Arton, L. R. 8 Eq. 626.

(*x*) Penton *v.* Robart, 2 East, 88.

(*y*) 7 M. & W. 14; 10 L. J. Ex. 153.

(*z*) See also Greene *v.* Cole, 2 Wms. Saund. 228; Elwes *v.* Mawe, 2 Smith, L. C. 117; Ruffey *v.* Henderson, 21 L. J. Q. B. 49; Wilde *v.* Waters, 24 L. J. C. P. 193.

move the fixtures (*a*), and if he removes the fixtures and disclaims afterwards, the landlord may recover against him the value of the fixtures. And this is so, even though the lease may contain an express power of removal after the end of the term, such power being itself put an end to by the disclaimer (*b*).

as regards right to remove fixtures.

Where there is an express covenant as to fixtures, the rights of the parties must of course depend on the terms of the covenant. Thus if it is provided that a lessee may remove the fixtures at the end of the term, he will be allowed a reasonable time for that purpose (*c*). On the other hand, if a lessee covenants to deliver up to the landlord, at the expiration of the term, fixtures, which, in the absence of such covenant, he might have removed, he thereby deprives himself of the right of removing them. In a case where the lessee covenanted to surrender the premises at the end of the term, "with all locks, keys, bars, bolts, marble and other chimney-pieces, foot paces, slabs, and other fixtures and articles which shall or may at any time during the term, be fixed or fastened to the said demised premises or be thereto belonging," it was held that, as the specific articles were all of the nature of landlord's fixtures, the general words were to be interpreted as referring to articles *ejusdem generis*, and consequently that the covenant did not prevent the lessee from removing the tenant's fixtures (*d*). In another case a lessee covenanted to surrender the premises "with all wainscots, *windows*, &c., and other things which then were or at any time thereafter should be thereunto affixed or belonging (looking-glasses and furniture excepted), and together also with all sheds and other erections, buildings, and *improvements*, which should be erected, built, or made upon the said premises," and it was held that a plate-glass shop front, fixed in its place by wooden wedges, without screws, nails, or glue, and which could

Covenants as to fixtures.

(*a*) *Ex parte* Stephens, 7 Ch. D. 127.

(*b*) *Ex parte* Glegg, 19 C. D. 7.

(*c*) Stansfield *v.* Mayor of Portsmouth, 27 L. J. C. P. 124; Sumner *v.* Brownlow, 34 L. J. Q. B. 130.

(*d*) Bishop *v.* Elliott, 11 Exch. R. 113; 24 L. J. Ex. 229.

be removed without injury to the premises, was within the covenant and could not be removed (*e*). Again, where a lessee covenanted to deliver up certain enumerated articles, "and other additions, improvements, and things" which should be anyways fixed or fastened upon the premises, Vice-Chancellor Wood thought that the general words could not be restricted, there being no assignable genus to which the enumerated articles belonged; and the Vice-Chancellor held that the lessee could not make a marketable title to articles in the nature of tenant's fixtures (*f*).

It is evident from the above cases, that if it is intended that the lessee shall have the ordinary rights of a tenant with regard to fixtures, care must be taken that the covenants of the lease are so framed as not to prejudice that right.

Agricultural Holdings Act, 1875.

The relative rights of landlords and tenants of farms at the determination of the tenancy are considerably affected by the Agricultural Holdings Act, 1875, which came into operation on the 14th February, 1876. The Act applies to all contracts of tenancy beginning after that day, except so far as the parties agree to exclude its operation, which they are allowed to do (*g*), and also to contracts of tenancy from year to year or at will current on that day, unless one of the parties have, within two months afterwards, given notice to the other of his desire that the Act shall not apply (*h*); but the operation of the Act is confined to holdings either wholly agricultural or wholly pastoral, or partly agricultural, and as to the residue pastoral, and being of the extent of at least two acres (*i*); and the Act applies whether the landlord is absolute owner or has a limited estate only, and although his interest is encumbered to any extent.

Operation of Act may be negatived.

Outgoing tenant to be allowed compensation for

Under this Act an outgoing tenant is to be allowed compensation for unexhausted improvements, done by him during the tenancy and falling within either of the

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(*e*) Burt *v.* Haslett, 25 L. J. C. P. 295.

(*f*) Wilson *v.* Whateley, 1 J. & H. 436. See also Dumerque *v.* Rumsey, 33 L. J. Ex. 88.

(*g*) Sec. 56.

(*h*) Sec. 57.

(*i*) Sec. 58.

three classes following, viz. :—Class I. Drainage of land, erection or enlargement of buildings, laying down of permanent pasture, making and planting of osier beds, making of water meadows or works of irrigation, making of gardens, making or improving of roads or bridges, watercourses, ponds, wells, or reservoirs, or of works for supply of water for agricultural or domestic purposes, making of fences, planting of hops, planting of orchards, reclaiming of waste land, and warping of land. Class II. Boring, chalking, claying, liming, and marling of land, and clay-burning; and Class III. Application to land of purchased artificial or other purchased manure, and consumption on the holding by cattle, sheep, or pigs, of cake or other feeding stuff not produced on the holding (*k*).

unexhausted improvements falling within three classes.

First class improvements are to be deemed exhausted at the end of twenty years at the latest, 2nd class at the end of seven years, and 3rd class at the end of two years (*l*).

Time in which improvement exhausted.

A tenant is not entitled to compensation in respect of an improvement of the first class unless he has executed it with the previous consent in writing of the landlord (*m*), or in respect of an improvement of the 2nd class, unless he has given to the landlord such notice in writing as therein provided of his intention to do so, nor where it is executed after the tenant has given or received notice to quit, unless it is executed with the previous consent in writing of the landlord (*n*). And other regulations are laid down as to the principles on which compensation is to be assessed (*o*). Deductions are to be allowed for rent, taxes, rates or tithe rent-charge in arrear (*p*), and for breaches of the tenant's covenants (*q*).

Consent of landlord for first class.

Notice to landlord for second class.

The tenant must give notice of his intention to claim compensation at least one month before the determination of the tenancy, and in such case the landlord may before the end of the tenancy, or within fourteen days

Procedure where compensation is claimed.

(*k*) Sec. 5.
(*l*) Sec. 6.
(*m*) Sec. 10.
(*n*) Sec. 12.
(*o*) Secs. 7 to 9, 11, 13 to 15.
(*p*) Sec. 16.
(*q*) Sec. 19.

afterwards, give a counter notice of his intention to claim compensation. If the parties do not agree as to the amount, mode, and time for payment of compensation, the Act provides for the difference between them being settled by arbitration (r), and for an appeal to the County Court against the award where the sum claimed exceeds 50*l.* (s). It is also provided that a landlord on paying compensation to the tenant may obtain from the County Court a charge on the holding in respect thereof (t).

Landlord may resume possession of part of holding for certain purposes.

The Act also enables the landlord in case of tenancies from year to year to resume possession of part of the holding for improvement purposes by giving a notice to quit, the tenant to be entitled in such case to a proportionate reduction of rent, and also to have the option of giving up the entire holding (u).

Tenant's property in fixtures, machinery, &c.

The Act also provides that if after the Act a tenant affixes to his holding any engine, machinery, or other fixture for which he is not under the Act or otherwise entitled to compensation, and which is not so affixed in pursuance of some obligation in that behalf, or instead of some fixture belonging to the landlord, then such fixture is to be the property of and be removable by the tenant: But before the removal of any fixture the tenant must pay all rent in arrear and perform all other his obligations to the landlord in respect of the holding. He must also give one month's previous notice in writing to the landlord of his intention to remove it, within which month the landlord may elect to purchase it at a valuation. And the right of removal does not apply to a steam-engine erected by the tenant if, before erecting it, he has not given the landlord notice of his intention to do so, or if the landlord has objected to the erection thereof (x).

The provision in the Act extending the time for a notice to quit has been already noticed.

(r) Secs. 20 to 35.
(s) Sec. 36.
(t) Secs. 42 to 44.
(u) Sec. 52.
(x) Sec. 53.

VIII. *Leases under powers.*

Powers of leasing usually conferred by settlements.

Every well-drawn settlement has hitherto given to the tenant for life in possession, or if there is no tenant for life in possession who is *sui juris*, to the trustees of the settlement, or to the guardians of the infant tenant for life or in tail, a power to grant leases for twenty-one years, and, if the nature of the property requires it, building and mining leases.

Defective execution of power of leasing, when remedied.

Where a power of leasing prescribes conditions to be observed in regard to its exercise, care should be taken to comply with them. But a failure to do so, where the failure is one of form and not of substance, will generally be relieved against by the Court in the exercise of its equitable jurisdiction. And independently of the ordinary jurisdiction of the Court in aiding defective execution of a power, the legislature has made special provision for remedying defects in the case of leases. Thus by the stat. 12 & 13 Vict. c. 26, it is provided that where in the intended exercise of any power of leasing, which by reason of the non-observance or omission of some condition or restriction or by reason of any other deviation from the terms of such power, is invalid against the remainderman, such lease, if made *bonâ fide*, and the lessee has entered thereunder, shall be considered in equity as a contract for a valid lease under such power, save so far as any variation may be necessary in order to comply with the terms of the power (*y*); and that where a lease under a power is invalid by reason that at the time of granting thereof the lessor could not lawfully grant the same, but the estate of such lessor in the property shall have continued after the time when such lease might have been granted by him, then the lease is to be valid (*z*). And by the Act 13 & 14 Vict. c. 17, it is provided that a receipt, or other memorandum in writing or payment of rent confirming an invalid lease, shall, as against

Stat. 12 & 13 Vict. c. 26.

Stat. 13 & 14 Vict. c. 17.

(*y*) Sec. 2.

(*z*) Sec. 4.

the person giving such receipt, &c., be deemed a confirmation (*a*).

Acts to authorize leases of settled estates now consolidated.

If the settlement contains no power of leasing, it was formerly necessary to obtain a private Act of Parliament to remedy the defect. But in 1856, an Act was passed to authorize sales and leases of settled estates, and was followed by amending Acts in subsequent sessions. All these Acts have been repealed, and their provisions consolidated by the Settled Estates Act, 1877 (*b*).

Act of 1877 enables tenants for life, &c., to grant leases without any application to the Court.

This Act enables any person entitled to the possession or receipt of the rents and profits of any settled estates (as defined by the Act), for an estate for *any* life, or for a term of years determinable with any life or lives, or for any greater estate, either in his own right, or in right of his wife (in the absence of any express declaration to the contrary in the settlement), and also any person entitled to the possession or receipt of the rents and profits of any unsettled estates as tenant by the curtesy, or in dower, or in right of a wife seised in fee, without any application to the Court, to demise the same except the principal mansion, and the lands usually occupied therewith, for any term not exceeding twenty-one years as regards estates in England, or for any term not exceeding thirty-five years as regards estates in Ireland, to take effect in possession or within one year from the making thereof, provided that the demise be by deed, and at the best rent without any premium, and be not without impeachment of waste, and contain a covenant to pay the rent and such other usual and proper covenants as the lessor shall think fit, and a condition of re-entry on non-payment of rent for twenty-eight days; and provided a counterpart be executed by the lessee (*c*), and the execution of the lease by the lessor is made sufficient evidence of the execution of the counterpart by the lessee (*d*).

Construction of similar clause in former Act.

The Act of 1856 (*e*) contained a clause similar to the above section in the present Act, except that the person

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(*a*) Sec. 2.
(*b*) 40 & 41 Vict. c. 18.
(*c*) Sec. 46.
(*d*) Sec. 48.
(*e*) 19 & 20 Vict. c. 120, sec. 32.

to exercise the power was "any person entitled to the possession, &c., for an estate *for life*," instead of "for an estate for *any life*." Upon the construction of that clause, it was held that under a trust directing the trustees to receive the rents and apply them in paying certain charges, and to pay the surplus to A. for his life, A. could not exercise the power of leasing, as in such a case the trustees, and not A., are to have the management (*f*). But this case is not to be taken as a decision that a tenant for life who is to receive the rents and profits during his life through the intervention of a trustee is not within the Act (*g*).

High Court of Justice may authorize leases.

The Settled Estates Act, 1877, also empowers the High Court of Justice to authorize leases of settled estates including building and mining leases, upon the terms and conditions mentioned in the Act.

Power of leasing conferred by Settled Land Act.

The power of leasing conferred by sec. 46 of the Settled Estates Act is now supplemented by the more extensive powers contained in the Settled Land Act, 1882. Under this Act (which is printed at length in an Appendix to this volume), tenants for life (*a*) and other limited owners (*b*) may grant leases of settled land for terms not exceeding, as regards building leases, ninety-nine years, mining leases sixty years, and other leases twenty-one years, subject to the conditions prescribed by the Act (*c*), and in certain cases may, with the sanction of the Court, make leases for longer terms or building grants in perpetuity (*d*). It is provided, however, that under a mining lease a portion of the rent reserved, viz., three-fourths, where the tenant for life is impeachable for waste, and otherwise one-fourth part shall be capitalized (*e*); and it is also provided that before granting a lease, the tenant for life shall give a month's notice of his intention in that behalf to each trustee of the settlement, and also to the trustees' solicitor, if known to

Under mining lease, portion of rent to be capitalized.

Notice of intended lease must be given to trustees.

(*f*) Taylor *v.* Taylor, L. R. 20 Eq. 297.

(*g*) Taylor *v.* Taylor, 3 Ch. D. 147.

(*a*) Sec. 6.

(*b*) Sec. 58, which defines the persons who are to have all the powers of a tenant for life.

(*c*) Secs. 6 to 17.

(*d*) Sec. 10.

(*e*) Sec. 11.

Power how to be exercised when tenant for life is an infant or married woman.

him (*f*). The power may be exercised when the tenant for life is an infant by the trustees of the settlement (*g*), and where she is a married woman with the concurrence of her husband, unless she is entitled for her separate use, in which case the husband's concurrence is unnecessary, and a restraint on anticipation will not prevent her from exercising the power (*h*).

Powers of Act are cumulative.

Advantage of exercising power in Act of 1877 in some cases.

The powers given by the Act are cumulative and do not preclude or interfere with the exercise of any powers for the same purpose conferred by the settlement or by any other Act (*i*). It follows that a lease for twenty-one years may still be granted by a tenant for life under section 46 of the Settled Estates Act, 1877, and it may sometimes be found convenient to resort to this power, so as to save the necessity of giving the notice required by section 45 of the Act of 1882. Again, where there is an open mine on the settled estate, the tenant for life might lease it for twenty-one years under the former Act, without being obliged to consent to the capitalization of any part of the rent under section 11 of the latter Act (*k*).

Act applies to where property is held on trust for sale.

Where land is held by trustees on trust for sale, the tenant for life or other limited owner of the proceeds of the sale may exercise the powers of the Act (*l*).

Leasing power of mortgagor and of mortgagee in possession.

As regards mortgages made after the 31st December, 1881, the Conveyancing Act, 1881, sec. 18, enables a mortgagor while in possession, and also a mortgagee in possession (except where a contrary intention is expressed in the mortgage deed) to make agricultural or occupation leases for any term not exceeding twenty-one years, and building leases for any term not exceeding ninety-nine years, subject to the following conditions:—(1) Every lease must be made to take effect in possession not later than twelve months after its date. (2) It must reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken. (3) It must

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(*f*) Sec. 45.
(*g*) Sec. 60.
(*h*) Sec. 61.
(*i*) Sec. 56.
(*k*) Campbell *v.* Leach, Ambl. 740.
(*l*) Sec. 63.

contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty-one days. (4) A counterpart must be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor is, in favour of the lessee, sufficient evidence. (5) Every building lease is to be made in consideration of the lessee or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings, within that time, or having executed or agreeing to execute within that time, on the land leased, an improvement for or in connexion with building purposes. (6) In any building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term. (7) In case of a lease by the mortgagor, the lessor must, within one month after making the lease, deliver a counterpart to the mortgagee, or, where there are more than one, to the mortgagee first in priority, but the lessee need not see that this provision is complied with.

Leases by ecclesiastical persons and bodies.

The powers of ecclesiastical persons and bodies to grant leases are regulated by the Acts of Parliament mentioned below (*m*). The general effect of these enactments is to prohibit leases for more than twenty-one years or three lives, except as regards houses in towns, which may be demised for forty years, and incumbents must obtain the confirmation of the patron and ordinary in order to bind their successors. Other restrictions are imposed by the Acts (*n*). The remedial clauses in the Act 12 & 13 Vict. c. 26, above referred to do not apply to ecclesiastical leases (*o*).

(*m*) 32 Hen. VIII. c. 28; 1 Eliz. c. 19; 13 Eliz. c. 10; 14 Eliz. c. 11; 18 Eliz. c. 11; 39 & 40 Geo. III. c. 41; 5 & 6 Vict. c. 27.

(*n*) See Bacon Ab. Tit. Leases E.; Jenkins *v.* Green, 28 Beav. 87.

(*o*) Sec. 7.

IX. *Other matters relating to leases.*

Lessee estopped from disputing his landlord's title, but may show that it has expired.

A tenant cannot, during his possession of the premises demised, dispute the title of the landlord under whom he entered (*l*), and this rule extends to an undertenant (*m*). But a tenant may show that the landlord's title has expired (*n*), and he may do that (among other ways) by showing an eviction either actual or constructive. Thus, if a tenant is evicted by a title paramount to the lessor's, he may plead such eviction, and it would seem that it is not necessary that he should wait to be actually evicted, but that if he attorns to a party who has a right to evict him, and has actually commenced proceedings for that purpose, that is equivalent to an eviction (*o*). But a mere payment of rent to a party who threatens expulsion is not a constructive eviction (*p*).

Estoppel applicable to action for trespass.

The doctrine of estoppel is applicable to an action for trespass as well as for ejectment (*q*).

Implied covenant for quiet enjoyment.

Upon every demise, whether under seal or by parol, there is in the absence of express covenant an implied contract on the part of the lessor for quiet enjoyment by the lessee absolutely, and consequently if a tenant is evicted by a superior title, or is distrained on for a rent-charge charged on the land by a predecessor in title of the lessor, or is otherwise disturbed in his possession, he may sue the lessor on such implied covenant (*r*). But the implied covenant ceases with the lessor's estate. Hence if tenant for life grants a lease for years, the

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(*l*) Doe d. Knight *v.* Lady Smythe, 4 M. & S. 347; Wood *v.* Day, 1 Moore, 389; Co. Lit. 47 *b.*; 1 Wms. Saund. 325; Att.-Gen. *v.* Lord Hotham, 3 Russ. 415; Fleming *v.* Gooding, 10 Bing. 549; Francis *v.* Doe, 4 M. & W. 331.

(*m*) London & N. W. Railway Company *v.* West, L. R. 2 C. P. 553.

(*n*) 1 Wms. Saund. 418; Neave *v.* Moss, 1 Bing. 360; Hopcroft *v.* Keys, 9 Bing. 613.

(*o*) Mayor, &c., of Poole *v.* Whitt, 15 M. & W. 571, 16 L. J. Ex. 229.

(*p*) Delaney *v.* Fox, 2 H. & N. 426; 26 L. J. C. P. 248.

(*q*) Delaney *v.* Fox, *ubi suprà.*

(*r*) Noke's Case, 4 Co. R. 80 *b.*; Hancock *v.* Caffyn, 8 Bing. 358; Bundy *v.* Cartwright, 8 Ex. Rep. 913; Hall *v.* City of London Brewery Company, 31 L. J. Q. B. 257.

Restrained by the express covenant.

implied covenant ceases on his death (*rr*). If the lease contains an express covenant for quiet enjoyment, without any interruption from the lessor or any person claiming under him, such express covenant restrains the generality of the implied contract (*s*), and should therefore always be inserted in the interest of the lessor.

Tenant is bound not to confound boundaries.

A tenant is bound to keep during his tenancy, and to leave at the end of it, his landlord's property not in any way confounded with his own (*t*), and the Court may at any time during the tenancy, as well as at the end of it, direct an inquiry to ascertain the boundary (*u*).

Practice as to preparation of leases.

In the absence of special stipulation it is the practice for the lessor's solicitor to prepare the lease, and for the lessee to pay his own expenses and those of the lessor.

X. *Stamps on leases and agreements for leases.*

The present Stamp Act (*x*) imposes the following duties on leases :—

	£	*s.*	*d.*
(1) For any definite term less than a year :			
(*a*) Of any dwelling-house or tenement, or part of a dwelling-house or tenement, at a rent not exceeding the rate of £10 per annum . . .	0	0	1
(*b*) Of any furnished dwelling-house or apartments where the rent for such term exceeds £25	0	2	6
(*c*) Of any lands, tenements, or heritable subjects, except or otherwise than as aforesaid	The same duty as a lease for a year at the rent reserved for the definite term.		

(*rr*) Adams *v.* Gibney, 8 L. J. C. P. 242 ; Penfield *v.* Abbott, 32 L. J. Q. B. 66.

(*s*) Noke's Case, *ubi suprà* ; Line *v.* Stephenson, 4 Bing. N. C. 678 ; Stanley *v.* Hayes, 3 Q. B. 105 ; 11 L. J. Q. B. 176 ; Spencer *v.* Marriott, 1 B. & C. 457 ; Dennett *v.* Atherton, L. R. 7 Q. B. 316.

(*t*) Att.-G. *v.* Fullerton, 2 V. & B. 264.

(*u*) Spike *v.* Harding, 7 Ch. D. 871.

(*x*) 33 & 34 Vict. c. 97, sched. "Lease or Tack."

(2) For any other definite term, or for any indefinite term:

Of any lands, tenements, or heritable subjects:—

Where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock, or security:

In respect of such consideration . . The same duty as a conveyance on a sale for the same consideration.

Where the consideration, or any part of the consideration, is any rent:

In respect of such consideration:

If the rent, whether reserved as a yearly rent or otherwise, is at a rate, or average rate:

	If the term is definite and does not exceed 35 years, or is indefinite.			If the term being indefinite exceeds 35 years, but does not exceed 100 years.			If the term being definite exceeds 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.
Not exceeding £5 per annum	0	0	6	0	3	0	0	6	0
Exceeding									
£5 and not exceeding £10	0	1	0	0	6	0	0	12	0
£10 ,, ,, £15	0	1	6	0	9	0	0	18	0
£15 ,, ,, £20	0	2	0	0	12	0	1	4	0
£20 ,, ,, £25	0	2	6	0	15	0	1	10	0
£25 ,, ,, £50	0	5	0	1	10	0	3	0	0
£50 ,, ,, £75	0	7	6	2	5	0	4	10	0
£75 ,, ,, £100	0	10	0	3	0	0	6	0	0
£100									
For every full sum of £50, and also for any fractional part of £50 thereof . .	0	5	0	1	10	0	3	0	0

	£	s.	d.
(3) Of any other kind whatsoever, not hereinbefore described	0	10	0

The Act also contains the following clauses relating to stamps on leases :—

Agreements for not more than thirty-five years to be charged as leases.

Sect. 96. (1) An agreement for a lease or tack, or with respect to the letting of any lands, tenements, or heritable subjects for any term not exceeding thirty-five years, is to be charged with the same duty as if it were an actual lease or tack made for the term and consideration mentioned in the agreement.

(2) A lease or tack made subsequently to and in conformity with such an agreement, duly stamped, is to be charged with the duty of sixpence only.

Leases how to be charged in respect of produce, &c.

Sect. 97. (1) Where the consideration, or any part of the consideration, for which any lease or tack is granted or agreed to be granted, does not consist of money, but consists of any produce or other goods, the value of such produce or goods is to be deemed a consideration in respect of which the lease or tack or agreement is chargeable with *ad valorem* duty, and where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of such produce or goods is, for the purpose of assessing the *ad valorem* duty, to be estimated at a given sum, or according to such permanent rate.

Statement as to value to be deemed true.

(2) A lease, or tack, or agreement, made either entirely or partially, for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such statement, is, so far as regards the subject matter of such statement, to be deemed duly stamped, unless or until it is otherwise shown that such statement is incorrect, and that it is in fact not duly stamped.

No additional duty on account of penal rent.

Sect. 98. (1) A lease, or tack, or agreement for a lease or tack, or with respect to any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, tack, or agreement, of or relating to the same subject matter.

No additional duty on account of covenant to build.

(2) No lease made for any consideration or considerations in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is to be charged with any duty in respect of such further consideration.

Duty on leases by ecclesiastical corporations.

(3) No lease for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation aggregate or sole, is to be charged with any higher duty than thirty-five shillings.

Duty in certain cases may be denoted by adhesive stamp.

Sect. 99. The duty upon an instrument chargeable with duty as a lease or tack for any definite term less than a year of—

(1) Any dwelling-house or tenement, or part of a dwelling-house or tenement, at a rent not exceeding the rate of ten pounds per annum :

(2) Any furnished dwelling-house or apartments :

Or upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed.

Penalty in certain cases.

Sect. 100. (1) Every person who executes, or prepares, or is employed in preparing any instrument upon which the duty may, under the provisions of the last preceding section, be denoted by an adhesive stamp, and which is not, at or before the execution thereof, duly stamped, shall forfeit the sum of £5.

(2) Provided that nothing in this section contained shall render any person liable to the said penalty of £5 in respect of any letters or correspondence.

No. I.

LEASE *of a* HOUSE *from* YEAR TO YEAR *or for a term of* THREE YEARS.

HOUSE FROM YEAR TO YEAR.

MEMORANDUM OF AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*landlord*), of the one part and C. D., of, &c. (*tenant*), of the other part: The said A. B. (hereinafter called "the landlord") agrees to let, and the said C. D. (hereinafter called "the tenant") agrees to take, ALL that messuage or dwelling-house, &c. (*describing it*): The tenancy to be from year to year, commencing on the —— day of ——, 18—, [*or* the tenancy to be for a term of three years] at the yearly rent of £——, payable by equal quarterly payments on, &c. (*days of payment*), the last quarterly payment to be made in advance on the —— day of —— preceding the end of the tenancy, together with the quarterly rent due on that day. AND THE TENANT agrees to pay all rates, taxes, and assessments payable in respect of the premises during the tenancy (except land tax and the landlord's property tax); AND ALSO to keep all the glass in the windows, and all shutters, locks, fastenings, bells, and other internal fixtures in, upon, and belonging to the premises in good and sufficient repair during the tenancy, and the same in good and sufficient repair to deliver up at the end thereof (reasonable wear and tear and damage by fire only excepted): AND the tenant also agrees not to assign or underlet the premises without the consent in writing of the landlord. AND it is agreed that if any rent shall be in arrear for twenty-eight days, or there shall be any breach by the tenant of the conditions above expressed, the landlord may re-enter on the premises without giving any notice to quit, and expel the tenant therefrom. And the landlord agrees that the tenant paying the said rent, and observing the above conditions, shall quietly hold and enjoy the said premises without any lawful interruption by the landlord or any person claiming under him.

Parties.

Agreement to let and take house.

From year to year.

Rent.

Tenant to pay rates and taxes.

To keep glass in the windows, &c.

Not to assign or underlet without consent.

Condition of re-entry.

Landlord agrees for quiet enjoyment by tenant.

IN WITNESS, &c.

No. II.

FOR THREE YEARS WITH OPTION TO HAVE A LEASE.

AGREEMENT *for a* THREE YEARS' TENANCY *with option to the tenant to have a* LEASE *for a longer* TERM.

Proviso that tenant on giving notice shall be entitled to a lease of the premises for a term.

MEMORANDUM OF AGREEMENT, &c. (*same as last Precedent to the end, and then add the following:*) PROVIDED ALWAYS and it is agreed and declared, that if at any time during the tenancy hereby created, the tenant shall be desirous of having a lease of the said premises for a term of twenty-one years, determinable by him at the end of the first seven or fourteen years, and shall give to the landlord a notice in writing to that effect, then, and in such case, the landlord will grant to the tenant a lease of the said premises accordingly, for such term as aforesaid, the lease to commence and the term to be computed from the quarter day next following the date of such notice at the yearly rent of £——, and subject to the covenants and provisions contained in the form of lease which has been produced to the tenant and signed by him, being the form usually adopted on the —— estate, of which the said premises are part.

IN WITNESS, &c.

No. III.

OF FURNISHED HOUSE FOR A SHORT PERIOD.

LEASE *of a* FURNISHED HOUSE *with* GARDEN *for a short period,* TENANT *to take care of furniture and keep garden in good order,* LANDLORD *to keep house in repair.*

Agreement to let and take house and furniture.

MEMORANDUM OF AGREEMENT, &c. (*as in Precedent No. I.:*) The said A. B. (hereinafter called "the landlord") agrees to let, and the said C. D. (hereinafter called "the tenant") agrees to take, ALL that messuage or dwelling-house called —— situate at ——, with the garden, grounds, and other appurtenances thereto belonging, and also the furniture and effects therein, as per inventory signed by both parties, from the —— day of ——, until the —— day of —— next, At the rent of £—— for every

Rent.

calendar month of the said tenancy, to be paid on the —— day of each month, the first payment to be made on the —— day of —— next: THE TENANT agrees to keep the said furniture and effects clean and in good condition, and at the end of the tenancy to leave the said messuage, together with the said furniture and effects, clean and in as good state, condition, and repair as they are now in, and to make compensation for any damage done, or for any articles missing (reasonable wear and tear and damage by fire excepted); ALSO to keep the garden and grounds belonging to the said messuage in good order and condition during the tenancy, and so to leave the same at the end of the tenancy; ALSO not to assign or underlet the said premises or any part thereof, nor remove the said furniture and effects, or any of them from the said premises, without the consent of the landlord. AND IT IS AGREED that if any rent, &c. (*condition for re-entry, suprà*, p. 42). THE LANDLORD agrees to execute all outside and inside repairs of the said messuage which may be found necessary in the course of reasonable wear, and to pay the ground rent, and all rates and taxes of every description, and to indemnify the tenant therefrom; AND ALSO that, &c. (*for quiet enjoyment by tenant, suprà*, p. 42.)

OF FURNISHED HOUSE FOR A SHORT PERIOD.

Tenant to keep furniture in good condition, and to leave house and furniture at end of lease in as good condition as at present, and to make compensation for missing articles.

To keep garden in good order.

Not to assign or underlet without consent.

Condition of re-entry.

Landlord to do repairs, and to pay rates and taxes.

IN WITNESS, &c.

No. IV.

LEASE *of* UNFURNISHED APARTMENTS *on a* QUARTERLY TENANCY.

UNFURNISHED APARTMENTS.

MEMORANDUM OF AGREEMENT, &c. (*as before*). The said A. B. (hereinafter called "the landlord") agrees to let, and the said C. D. (hereinafter called "the tenant") agrees to take, the following rooms, part of a dwelling-house, No. —— in —— Street, in the town of —— (namely), the whole of the first and second floors, together with the use, in common with the other occupants of the house, of the water-closet on the ground floor; THE tenancy to be from quarter to quarter, commencing on the 25th day of this present month of March, and determinable on any quarter day by either party giving to the other a quarter's notice to quit; At the rent of £—— for every quarter, to be paid on every quarter day during the tenancy; AND the tenant

Lease of rooms

from quarter to quarter.

Rent.

Agreement by tenant to

UNFURNISHED APARTMENTS.

give up premises in as good condition as same are now in.

agrees to deliver up the said premises at the end of the tenancy in as good repair and condition as the same are now in, reasonable wear and tear and damage by fire excepted.

IN WITNESS, &c.

No. V.

FURNISHED APARTMENTS.

LEASE *of* FURNISHED APARTMENTS *for* SIX MONTHS.

Agreement to let and take rooms and furniture

for six months.

Rent to be paid monthly.

Tenant to give up rooms, &c., in as good condition as same are now in.

Power to landlord to re-enter if rent in arrear.

MEMORANDUM OF AGREEMENT, &c. (*as before*). The said A. B. (hereinafter called "the landlord"), agrees to let, and the said C. D. (hereinafter called "the tenant") agrees to take, All those three rooms on the first floor of the messuage or dwelling-house, situate, &c., and all the furniture, articles, and things in or about the same specified in the schedule hereto, for the term of six calendar months, computed from the —— day of ——, at the rent of £—— for every calendar month, such rent to be paid on the first day of every calendar month, the first payment to be made on the first day of —— next: AND the tenant agrees at the expiration of the tenancy to deliver up the said rooms, furniture, articles, and things in as good a condition as the same are now in, reasonable wear and tear and damage by fire excepted: AND IT IS AGREED that if any monthly payment of rent shall be in arrear for more than fourteen days the landlord may re-enter on the said premises and determine this demise.

IN WITNESS, &c.

No. VI.

OF A DWELLING-HOUSE.

LEASE *of a* DWELLING-HOUSE *for* TWENTY-ONE YEARS, *determinable on* NOTICE *at the end of* SEVEN *or* FOURTEEN YEARS. USUAL COVENANTS *by* LESSEE, *including covenants not to* ASSIGN *or* UNDERLET *without consent of* LESSOR, *or use the* HOUSE *except as a* DWELLING-HOUSE.

Parties.

Witnessing part.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part, WITNESSETH, that in consideration of the rent hereinafter reserved, and of the lessee's covenants hereinafter contained, the said A. B. (hereinafter called "the lessor") hereby demises (z) unto the said C. D. (hereinafter called "the lessee"), ALL THAT messuage or dwelling-house, &c. (*parcels*), TO HOLD the same unto the lessee, for the term of twenty-one years from the —— day of ——, YIELDING AND PAYING during the said term the yearly rent of £——, by four equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in every year, the first quarterly payment to be made on the 25th day of March next (*a*): AND the lessee hereby covenants with the lessor, in manner following (that is to say): That the lessee will pay the rent hereby reserved at the time and in manner aforesaid, and will also pay all rates, taxes, and assessments whatsoever, which now are, or during the said term shall be, imposed or assessed upon the said premises or the landlord or tenant in respect thereof, by authority of Parliament or otherwise (except the land tax and the landlord's property tax) (*b*): AND ALSO will at all times during the said term keep the said premises in good and substantial repair, and the same in good and substantial repair deliver up to the lessor, at the expiration or sooner determination of the said term (*c*): AND

Demise of dwelling-house to lessee for twenty-one years

Rent.

Covenants by lessee to pay rent, and rates and taxes.

To keep premises in repair and deliver up same in repair at end of term.

(*z*) If the lease is made under a power conferred by any instrument or under the power given by the Settled Estates Act, 1877, sect. 46, or the Settled Land Act, 1882, the form will be "the said A. B. (hereinafter called the lessor) in exercise of the power for this purpose given to him by, &c. (*describe the instrument*) [or by statute] and of all other powers (if any) him hereunto enabling hereby appoints and demises, &c."

(*a*) Sometimes the last quarter's rent is made payable in advance.—In such case add here, "and the last quarterly payment to be made in advance on the 29th day of September, immediately preceding the expiration of the term, together with the quarterly payment falling due on that day."

(*b*) Under the above covenant the tenant will have to pay paving or sewering charges under local Acts of Parliament, *vide suprà*, p. 9. If it is not intended to throw this liability on the tenant, the words after "the said premises" down to "otherwise" should be omitted, and the following words added after "property tax:" and except also any charges or assessments for paving, sewering, or other similar purposes, which may hereafter be imposed on the said premises or the owner thereof by authority of Parliament or otherwise.

(*c*) Add if the landlord insures, damage by fire excepted.

OF A DWELLING-HOUSE.

To paint outside every four years, and inside every seven years.

To restore outside stucco work,

and whitewash and colour inside.

To contribute to repairs of party walls, &c.

To permit lessor to enter to view state of premises,

and to repair after notice of defects.

To insure in joint names of lessor and lessee,

to pay premiums, &c.,

and produce policy and receipts for premiums,

to lay out insurance moneys in rebuilding,

and if insufficient, to make up deficiency,

not to carry on any trade, but to use premises as private dwelling-house.

in particular will paint with two coats at least of good oil colour and in a proper and workmanlike manner the outside wood and ironwork of the said premises once in every four years of the said term, and such parts of the inside of the said premises as have been usually painted once in every seven years of the said term, the last painting both outside and inside to be in the year immediately preceding the determination of this lease, whether by effluxion of time or notice: AND will at the same time with every outside painting restore and make good the outside stucco work wherever necessary, and at the same time with every inside painting whitewash and colour such parts of the inside of the said premises as are usually whitewashed and coloured: [AND ALSO will pay and contribute a fair proportion of the expenses of making, repairing, and securing all party and other walls, gutters, sewers, and drains belonging to the said demised premises in common with the adjacent premises]: AND ALSO will permit the lessor, or his agent, with or without workmen, and others, twice in every year during the said term, at convenient hours in the day time to enter into and upon the said demised premises, and view and examine the state and condition thereof, and of all such decays, defects, and wants of reparation as shall be then and there found, to give to the lessee, notice in writing to repair and amend the same within six calendar months then next following, within which time the lessee will repair and amend the same accordingly: AND ALSO will insure and keep insured the said demised premises from loss or damage by fire, in the joint names of the lessor and lessee, in the —— Insurance office, or in some other well-established office to be approved of by the lessor, in the sum of £—— at least, and will pay all premiums and sums of money necessary for that purpose, and will whenever required produce to the lessor the policy of such insurance, and the receipt for every such payment, and will cause all moneys received by virtue of any such insurance to be forthwith laid out in rebuilding and reinstating the said premises, and if the monies so received shall be insufficient for the purpose, will pay the deficiency out of his own monies: AND ALSO will not at any time during the said term carry on or permit to be carried on any trade or business upon the said premises, or permit the same to be occupied or used in any other manner than as a private dwelling-house: AND ALSO will not (except by will) assign or underlet the said demised premises, or any part thereof, without the consent in writing of the lessor, first had and obtained [unless such consent shall be unreasonably withheld]: PROVIDED ALWAYS, and it is hereby declared, that if the said yearly rent of £—— or any part thereof, shall be in arrear for the space of twenty-one days next after any of the days whereon the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if there shall be any breach or non-observance of any of the lessee's covenants hereinbefore contained (*d*), then and in any of the said cases it shall be lawful for the lessor, at any time thereafter, into and upon the said demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess, and enjoy as in his former estate: PROVIDED ALWAYS, and it is hereby declared that if the lessee shall be desirous of determining this lease at the end of the first seven or fourteen years of the said term, and of such desire shall give to the lessor, or his agent, or leave at his usual or last known place of abode in England or Wales, six calendar months' previous notice in writing, then and in such case at the end of such seven or fourteen years, as the case may be, the term hereby granted shall cease, but subject to the rights and remedies of the lessor for or in respect of any rent in arrear, or any breach of any of the lessee's covenants: AND the lessor hereby covenants with the lessee, that the lessee paying the rent hereby reserved, and observing and performing the covenants and conditions herein contained, and on his part to be observed and performed, shall and may peaceably and quietly possess and enjoy the said premises hereby demised during the said term without any lawful interruption from or by the lessor or any person rightfully claiming from or under him. AND IT IS DECLARED that all rights and obligations of the lessor and lessee respectively under these presents shall be incident to the reversion expectant on this lease and the leasehold interest hereby created respectively, and shall pass and devolve therewith on every alienation or devolution thereof.

OF A DWELLING-HOUSE.

Not to assign or underlet without consent, but consent not to be unreasonably withheld.

Power of re-entry for non-payment of rent or breach of covenants.

Power to lessee to determine lease at end of seven or fourteen years.

Covenant by lessor for quiet enjoyment by lessee.

Devolution of rights and obligations.

IN WITNESS, &c.

(*d*) It is apprehended that the above proviso for re-entry will apply to the breach of a negative as well as an affirmative covenant. (Evans *v.* Davis, 10 Ch. D. 74.)

No. VII.

OF A HOUSE AND GARDEN.

UNDER-LEASE *of a* DWELLING-HOUSE *and* GARDEN *for a* TERM *of* SEVEN YEARS, *determinable by* EITHER PARTY *at the* END *of the* THIRD *or* FIFTH YEAR; *the* INTERNAL REPAIRS *to be done by the* LESSEE, *and the* EXTERNAL REPAIRS *by the* LESSOR, *who also* INSURES *against* FIRE; PROVISION *for* SUSPENDING *rent in case of* DAMAGE *by* FIRE.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part, Witnessing part. WITNESSETH, that in consideration of the rent and lessee's covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor") hereby Demise of house, &c., demises unto the said C. D. (hereinafter called "the lessee"), ALL THAT &c., (*describe premises*), Together with the fixtures now in and about the said premises, a list whereof is set forth in the schedule hereto: to lessee for term of seven years, determinable. To HOLD the same unto the lessee for the term of seven years from the —— day of ——, 18—, determinable nevertheless as hereinafter mentioned, Rent. YIELDING AND PAYING during the said term the yearly rent of £—— by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the first quarterly payment thereof to be made on the —— day of —— next. Further rent in respect of insurance against fire. [AND ALSO yielding and paying during the term by way of further rent a yearly sum equal to the sum or sums which the lessor shall from time to time pay by way of premium for keeping the said premises insured against loss or damage by fire, pursuant to the covenant in that behalf hereinafter contained, the said further rent to be paid once a year on the quarter day immediately following the payment of such premium] (*e*). Lessee's covenant AND the lessee hereby covenants with the lessor in manner

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(*e*) When the lessor is himself a lessee and has covenanted with the ground landlord for insurance, it is generally more convenient that he and not the inferior lessee should see to the insurance, and in such case it is often provided that the latter shall pay an additional rent equal to the premium.

following (that is to say): that the lessee will pay the rent (*or* rents) hereby reserved on the days and in the manner aforesaid, and will also pay and discharge all taxes, rates, and assessments whatsoever, now or hereafter to become payable for or in respect of the premises hereby demised (except the land tax and landlord's property tax, and the ground rent and except also any charges or assessments for paving, sewering, or other similar purposes which may hereafter by any public authority or otherwise be imposed on and made payable by the owner of the premises): AND will at all times during the said term keep in good and sufficient repair and condition the inside of the said messuage and premises, and the fixtures comprised in the schedule hereto and the same in such repair and condition deliver up at the end of the lease: AND also will keep the garden and walks in good order, and the trees and ornamental shrubs properly pruned, and will renew any trees or shrubs which may perish or decay, and will not cut down or remove any trees or shrubs without the written consent of the lessor: AND also will permit the lessor, and also the superior landlord from time to time to enter into and upon the said premises in order to view the state and condition thereof: AND will not without the consent in writing of the lessor, assign or underlet the said premises or any part thereof, or carry on or permit to be carried on any trade or business thereon, or permit the same to be occupied in any other manner than as a private dwelling-house, or as a furnished lodging-house: AND will not allow any sale by auction to take place on the said premises, or do or suffer any other thing whatsoever which might be an annoyance to the neighbours or a breach of any covenant or condition in the ground lease: PROVIDED ALWAYS, &c. (*power of re-entry on non-payment of rent or breach of covenants, suprà,* p. 49): AND the lessor hereby covenants with the lessee in manner following, that is to say, That, &c. (*covenant for quiet enjoyment by lessee, suprà,* p. 49). AND also that he the lessor will during the said term pay the ground-rent payable in respect of the said premises, and will keep the outside walls and roofs, with the outside water-pipes and shoots and outside drains and sewers, properly repaired and cleansed, and the exterior woodwork and ironwork properly and sufficiently painted as required to be done under the lease from the ground landlord dated the ——

OF A HOUSE AND GARDEN.

to pay rent and taxes;

to keep inside in repair,

and garden in good order.

Not to assign without licence,

or carry on trade,

or allow sale by auction.

Covenant by lessor for quiet enjoyment by lessee,

and to keep outside of house in good repair, OF A HOUSE AND GARDEN.

day of ——: AND ALSO will at all times during the said term keep the said messuage and premises insured against loss or damage by fire in the sum of £—— at least, in conformity with the covenant in that behalf contained in the said ground lease: AND will, whenever required so to do by the lessee, produce to him the policy of such insurance and the receipt for the last premium, and will cause all monies received in respect of such insurance to be forthwith laid out in the reinstating of the premises: AND ALSO will at all times at the request and cost of the lessee produce to him the said ground lease: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said messuage and premises hereby demised or any part thereof shall at any time during the said term be destroyed or rendered uninhabitable by fire, then and in such case the payment of the rent hereby reserved or a proportionate part thereof, according to the extent of the damage incurred, shall be suspended until the said messuage and premises shall have been reinstated, and again rendered fit for habitation; and if any question shall arise whether the said messuage and premises, or any part thereof, shall have become uninhabitable by reason of fire, within the meaning of the aforesaid proviso, or what proportion of rent ought to be suspended on account thereof, such question shall be referred to two arbitrators, one to be appointed by each party, and such reference shall be considered a reference to arbitration within the meaning of the Common Law Procedure Act, 1854, and be subject to the provisions of the said Act relating to arbitrations: PROVIDED ALWAYS, and it is hereby further agreed and declared, that if the lessor or the lessee shall be desirous of determining this lease at the expiration of the third or fifth year of the said term of seven years, and of such desire shall give to the other party, or leave for him, at his usual or last known place of abode in England, six calendar months' previous notice in writing, then on the expiration of the said third or fifth year, as the case may be, the term hereby granted shall cease and determine, but without prejudice to the rights and remedies of the lessor for any arrears of rent or any breach of the lessee's covenants. (*Devolution of rights and obligations, suprà*, p. 49.)

and to insure against fire,

and to produce superior lease.

Proviso that rent shall be suspended in case of destruction by fire.

Power to either party to determine lease at end of third or fifth year.

IN WITNESS, &c.

No. VIII.

LEASE *by* MORTGAGEE *and* MORTGAGOR (*ee*).

BY MORTGAGEE AND MORTGAGOR.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (in whom the legal estate in the hereditaments hereinafter demised is vested by way of mortgage) (*mortgagee*), of the first part, C. D., of, &c., (being the person entitled to the equity of redemption of the said hereditaments) (*mortgagor*), of the second part, and E. F., of, &c. (*lessee*), of the third part,

Witnessing part.

WITNESSETH, that in consideration, &c., the said A. B. (hereinafter called "the lessor") at the request of the said C. D., hereby demises, and the said C. D. hereby demises and confirms unto the said E. F. (hereinafter called "the lessee"), ALL, &c. (*parcels—Habendum to lessee, for twenty-one years, at a yearly rent, as in Precedent No. VI. suprà*, p. 47): AND THE lessee hereby covenants with the lessor, and also (by way of separate covenant) with the said C. D., in manner following, that is to say: THAT, &c. (*covenants by lessee, and proviso for re-entry, as in Precedent No. VI., verbatim*): AND THE lessor, and also the said C. D., as to their own respective acts and deeds, but not further or otherwise, do hereby respectively covenant with the lessee that he paying the rent hereby reserved, and observing and performing the lessee's covenants hereinbefore contained, shall and may peaceably and quietly possess and enjoy the said premises during the said term, without any eviction or disturbance by the said covenanting persons respectively, or any person lawfully or equitably claiming from or under them respectively: PROVIDED ALWAYS, and it is hereby agreed and declared, that the lessee shall pay the rent hereby reserved unto the said C. D. or other the person for the time being entitled to the equity of redemption of the said premises, until the lessor shall by a notice in writing require the payment of the said rent to himself, and until such notice the receipt of the said C. D. or other the person entitled as aforesaid shall be

Mortgagee and mortgagor demise to lessee.

Covenants by lessee.

Covenants by mortgagor for quiet enjoyment by lessee.

Proviso that rent may be paid to mortgagor until notice by mortgagee, and

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(*ee*) It is assumed in the above Precedent that the mortgage was made before the 1st January, 1882, or that the leasing power conferred by the Conveyancing Act, 1881, sec. 18, on the mortgagor is negatived by the mortgage deed.

BY MORTGAGEE AND MORTGAGOR. — power to mortgagor to distrain.

a sufficient discharge for the said rent, and he shall have the like remedy by distress for recovery of arrears of the said rent as he would have had if seised at law of the said premises in reversion expectant on this lease. (*Devolution of rights and obligations, suprà*, p. 49).

In witness, &c.

No. IX.

BY MORTGAGOR UNDER POWER.

LEASE *by a* Mortgagor *under a* Power *created by the* Mortgage Deed (*f*).

Parties. Recital of mortgage deed.

THIS INDENTURE, made the —— day of ——, Between C. D., of, &c. (*mortgagor*), of the first part, A. B., of, &c. (*mortgagee*), of the second part, and E. F., of, &c. (*lessee*), of the third part, Whereas under an indenture, &c. (*date and parties*), the hereditaments hereinafter described are vested in the said A. B. by way of mortgage: and the said C. D., who is entitled to the equity of redemption of the said hereditaments and is in possession thereof, has power under the said indenture to lease the same in manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the

Witnessing part.

(*f*) In this Precedent the mortgagee is made a party, the lessee's covenants being entered into with him, as the person entitled to the legal reversion, but it is not intended that he shall execute the deed.

A mortgagor would in most cases prefer not to disclose the mortgage, and to frame the lease as if he were absolute owner. Whether a lease so framed would be binding on the mortgagee, if made under a power created by the mortgage deed and requiring in express terms that the rent shall be reserved to, and the covenants entered into with, the mortgagee is doubtful. See Yellowly *v.* Gower, 11 Exch. 274; 24 L. J. Exch. 289. But as regards leases made under the power conferred on a mortgagor in possession by the recent Act, it is apprehended that the omission of all reference to the mortgage would not affect the validity of the lease. The right to grant leases is thereby annexed and made incident to the office and estate of the mortgagor, and as the Act does not state that the rent and benefit of the lessee's covenants shall be reserved in terms to the mortgagee, there seems no reason why a condition to this effect should be implied. Moreover it is conceived that a reservation of rent, &c., to the mortgagor would under the operation of section 10 of the Act enure to the benefit of the mortgagee should he subsequently take possession and give notice to the lessee to pay the rent to him.

A lease by mortgagor under the statutory power, omitting all reference to the mortgage, is valid—*semble*

A lease by a mortgagor under the statutory power will therefore be in the same form as if he was absolute owner, and no separate precedent for such a lease is necessary.

BY MORTGAGOR UNDER POWER.

Mortgagor appoints and demises unto lessee.

said C. D. in exercise of the power vested in him for this purpose by the said indenture, and of all other powers (if any) him hereunto enabling, hereby appoints and demises unto the said E. F. ALL, &c. (*parcels—Habendum to lessee for term, and reservation of rent, suprà*, p. 47.) AND the said E. F. hereby covenants with the said A. B., and also by way of separate covenant with the said C. D., in manner following, that is to say: THAT he the said E. F., his executors, administrators, and assigns (all of whom are hereinafter included in the expression "the lessee"), will pay to the person for the time being entitled to the reversion expectant on this lease (hereinafter called "the reversioner") the rent, &c. (*covenant to pay rent and taxes, suprà, p.* 471): AND ALSO that the lessee will, &c. (*covenants to repair and other lessee's covenants, and proviso for re-entry, as in Precedent No. VI., suprà, p.* 47 to 49, *substituting "the reversioner." for "the lessor"*): AND the said C. D. hereby covenants, &c. (*covenant for quiet enjoyment, suprà, p.* 49), without any lawful interruption from or by the said C. D., or from or by the said A. B., or any person rightfully claiming from or under either of them: PROVIDED ALWAYS, &c. (*proviso that rent shall be paid to mortgagor until notice, &c., suprà, p.* 53, *substituting "the reversioner" for "the lessor."*)

IN WITNESS, &c.

No. X.

PROVISION *in a* LEASE *or* UNDERLEASE *enabling the* LESSEE *to* PURCHASE *the* REVERSION *in fee simple or* THE TERM *granted by the* SUPERIOR LEASE *upon Notice* (*g*).

OPTION TO LESSEE TO PURCHASE REVERSION.

THIS INDENTURE, &c. (*Lease or Underlease as in Precedent No. VI. or No. VII. to the end, adding the following provision*):

(*g*) According to the form here given the giving of the notice by the lessee to the lessor will constitute the relation of vendor and purchaser between them so as to entitle each party to specific performance of the contract for sale. Sometimes the clause is so worded as to make the payment of the money a condition precedent to the right of purchase. Thus in Lord

In clause giving to lessee right of purchase, payment of money on the day

OPTION TO LESSEE TO PURCHASE REVERSION.

Power to lessee on giving notice to lessor to purchase reversion in fee simple, or superior leasehold interest.

Time for completion.

Arrears of rent to be paid up to completion.

Conveyance.

PROVIDED ALWAYS, and it is hereby agreed and declared, that if the lessee shall be desirous of purchasing the reversion in fee simple in the premises hereby demised [*or* the unexpired residue of the term of years granted in the said premises by the said indenture, dated, &c. (*superior lease*) subject to the rent and lessee's covenants reserved by and contained in the said indenture], at the price of £——, and shall at any time before the —— day of —— 18—, (*h*) give to the lessor, or leave for him, at his usual or last known place of abode in England or Wales, a notice in writing to that effect, then and in such case the person giving or leaving such notice shall be deemed the purchaser of the said reversion [*or* of the unexpired residue of the said term subject as aforesaid] at the price of £——, as from the date of such notice subject to the following conditions (namely): 1stly, THE purchase-money shall be paid and the purchase shall be completed on such one of the quarterly days hereby appointed for payment of rent as shall happen next after the expiration of three calendar months from the date of such notice, and if the said purchase shall not be completed on that day, the purchaser shall pay to the vendor interest on the said purchase-money after the rate of 5 per cent. per annum, computed from that day up to the actual completion of the purchase; 2ndly, THE purchaser shall pay all arrears of rent up to the day appointed for the completion of the purchase, including the quarter's rent due on that day; 3rdly, UPON payment of the purchase-money and all arrears of rent at the time aforesaid, the vendor shall execute a proper conveyance [*or* assignment] of the said premises to the purchaser, such conveyance [*or* assignment] to be prepared by and at the expense

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sometimes made a condition precedent.

Ranelagh *v.* Melton, 2 Dr. & Sm. 278, the lease provided that if the lessee should desire to purchase the fee simple and should give three months' notice of such desire, and at the expiration of such notice should pay the purchase-money, then the lessor would convey the property to the lessee, and it was held that the money must be paid on the precise day on which the notice expired, and that until the condition was thus performed the relation of vendor and purchaser did not arise on either side. See also Weston *v.* Collins, 34 L. J. Ch. 353.

Rule against perpetuities applies to option of purchase.

(*h*) The day fixed must be within twenty-one years from the date of the lease, or within some life in being and twenty-one years afterwards, in order not to infringe the rule against perpetuities. The case of Birmingham Canal Company *v.* Cartwright, 11 Ch. D. 421, in which it was held that the rule against perpetuities did not apply to a provision of this kind is overruled, London & S. W. Company *v.* Gomm, 20 Ch. D. 582.

OPTION TO LESSEE TO PURCHASE REVERSION.

of the purchaser; 4thly, THE vendor shall, within one calendar month from the date of such notice as aforesaid, deliver to the purchaser or his solicitor an abstract of the vendor's title to the said premises, such title to commence with an indenture, dated, &c.; 5thly, WITHIN fourteen days after the delivery of the abstract the purchaser shall state in writing, and send to the vendor's solicitor, all objections and requisitions (if any) in respect of the title, and all objections and requisitions not sent within that time shall be deemed to be waived, and if any objection or requisition shall be made which the purchaser shall be unable or unwilling to remove or comply with, the vendor may, by a notice in writing, rescind the sale without payment of any compensation or costs whatsoever (*i*).

Title when to commence.

Requisitions to be sent within specified time.

IN WITNESS, &c.

No. XI.

AGREEMENT *for a* BUILDING LEASE *for the erection of* ONE HOUSE *for* NINETY-NINE YEARS.

AGREEMENT FOR BUILDING LEASE.

AN AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, whereby it is agreed as follows:—

Parties.

I. WHEN and so soon as the messuage or dwelling-house mentioned in the third article of this agreement shall have been erected and completed by the said C. D., the said A. B. will, by a good and sufficient lease, demise unto the said C. D. all that piece or parcel of land (*describe it*) and the messuage or dwelling-house, and buildings to be erected thereon, with their appurtenances, for the term of ninety-nine years, computed from the

Agreement to grant lease.

(*i*) If the option to purchase is exercised by the lessee after the lessor's death, the purchase-money will go to his (the lessor's) personal representative as part of his personal estate, and not to the heir or devisee of the real estate, Lawes *v.* Bennett, 1 Cox, 167; Townley *v.* Bedwell, 14 Ves. 591; Weeding *v.* Weeding, 1 J. & H. 424. This is inconvenient, and generally contrary to the lessor's intention, and it is therefore important that he should make proper provision by his will not only for enabling the sale to be carried out if the option is exercised, but also for making the purchase-money go to the persons who would otherwise have remained entitled to the reversion.

Purchase-money to be paid by lessee electing to purchase, goes to personal representative of lessor.

AGREEMENT FOR BUILDING LEASE.

—— day of —— last, at the yearly rent of a peppercorn, if demanded, for the first year of the said term, and at the yearly rent of £—— during the residue thereof, payable quarterly on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——; the first of such quarterly payments to be made on the —— day of ——.

Provisions to be inserted in lease.

II. The lease shall contain covenants by the lessee: To pay the said rent of £—— at the times and in manner aforesaid: To pay all taxes, rates, charges, and assessments to be payable either by landlord or tenant in respect of the premises (except the landlord's property-tax, if any): To keep the said messuage or dwelling-house and buildings in good and substantial repair, and deliver the same up to the lessor at the end of the term in good and substantial repair: To insure and keep insured the said messuage or dwelling-house and buildings to at least three-fourths of the value thereof in the joint names of the lessee and lessor in one of the public fire insurance offices in London or Westminster, and at all times when required to produce the policy of insurance, and the receipts of the premiums in respect of the same, to the lessor, or his agent, and to cause any money received by virtue of any such insurance to be forthwith applied in reinstating the premises, and if the same shall be insufficient to make up the deficiency: To pay and allow a reasonable share and proportion for and towards the costs and expenses of making, supporting, and repairing all pavements, fences, and party-walls, sewers, and drains belonging to the said premises, in common with other messuages, tenements, or lands, and so that such proportion shall be ascertained by the surveyor of the lessor: To permit the lessor, with or without workmen, or others, twice or oftener in every year during the said term, to enter upon the said premises to view the condition thereof, and also during the last seven years to take a schedule of the landlord's fixtures: And the said lease shall also contain a condition for re-entry by the lessor on non-payment of rent for twenty-one days, or on breach of any of the lessee's covenants: And the said lease shall also contain all other covenants and conditions (if any) usually inserted in leases of the like nature.

Lessee to erect messuages, &c.

III. The said C. D. will, before the —— day of ——, 18—, at his own expense, and at an outlay of £—— at the least, in a good, substantial, and workmanlike manner, of the best materials,

AGREEMENT FOR BUILDING LEASE.

and to the satisfaction of the surveyor of the said A. B., erect, build, and completely finish, fit for habitation and use, upon the front of the said piece of land towards the —— road, at the distance of —— feet from the boundary line of such road, coloured red in the said plan, a good and substantial brick messuage or dwelling-house of the rate of building, character, and description in every respect specified in the specification hereto annexed by way of schedule, and also such outbuildings, conveniences, and sewers as shall be necessary or proper to be used with such messuage or dwelling-house for rendering the same commodious.

Power to lessor to enter if lessee fails to complete buildings.

IV. If the said C. D. shall not complete the said messuage or dwelling-house before the said —— day of ——, 18—, pursuant to article 3, or shall not proceed with the works with proper diligence, then it shall be lawful for the said A. B. or his agent, if he thinks fit, to re-enter on the said piece of ground and take possession thereof and of all the buildings and materials which may be thereon, and to retain the same as his own absolute property.

Lessee will accept lease, execute counterpart, and pay costs of same.

V. The said C. D. will accept a lease of the said premises for the term, at the rent, and subject to the covenants and conditions herein-before expressed, and will execute a counterpart thereof, and pay the costs and expenses of and incidental to the preparation and execution of this agreement and the said lease and the counterpart thereof.

In witness, &c.

Where it is intended that the intended lessee shall have the right to call for the lessor's title (k), the following clauses will be substituted in the above Precedent for Clause V.

Intended lessee to be at liberty to examine lessor's title

V. Before commencing operations under this agreement the said C. D. shall be at liberty to examine the title of the said A. B., such title to commence with an indenture dated, &c., and an abstract

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Prudence of requiring to see the lessor's title.

(k) In the absence of stipulation, an intended lessee is not entitled to call for the lessor's title (Vendor and Purchaser Act, 1874, sec. 2, sub-s. 1). When, therefore, he contemplates a large outlay, it will be prudent in him to stipulate for the production of some title on the lessor's part, particularly as according to a recent case the Act does not protect him from the application of the doctrine of equity as to constructive notice. Patman *v.* Harland, 17 Ch. D. 353.

AGREEMENT FOR BUILDING LEASE.

from a certain date. Abstract. Time for sending in requisitions, &c.

Power to lessor to rescind in case of objections. Costs to be borne by lessee.

thereof to be delivered to the said C. D. within seven days from the date of this agreement. The said C. D. shall send to the said A. B., or his solicitor, his objections and requisitions in respect of the title or the abstract within fourteen days from the receipt of the abstract, and subject to such objections and requisitions, shall be deemed to have accepted the title. If any objection or requisition shall be made which the said A. B. shall be unable or unwilling to remove or comply with, he shall be at liberty to rescind this agreement by giving to the said C. D. a notice in writing to that effect, in which case the said C. D. shall have no claim for compensation or costs. All expenses connected with the verification of the title or otherwise, which in case of a sale are now by law payable by the purchaser, shall be payable by the said C. D.

Lessee to execute counterpart. Costs of agreement and lease to be borne equally.

VI. SUBJECT to the last preceding article the said C. D. agrees to accept a lease of the premises upon the terms above set forth, and to execute a counterpart thereof, and the costs and expenses attending the preparation and execution of this agreement, and the said lease and the counterpart thereof shall be borne by the said A. B. and C. D. in equal shares (*l*).

IN WITNESS, &c.

No. XII.

AGREEMENT FOR BUILDING LEASE. [*Another Form.*]

AGREEMENT *for a* LEASE *for* NINETY-NINE YEARS *of a piece of* LAND *on which* SEVERAL DWELLING HOUSES *are agreed to be* BUILT *by the* LESSEE. SPECIAL PROVISIONS, *enabling him to have* SEPARATE LEASES *of the* SEVERAL HOUSES *and to* APPORTION *the* RENT.

Parties.

MEMORANDUM OF AGREEMENT, made the —— day of ——, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, whereby it is agreed as follows:—

Agreement to grant lease or leases.

I. WHEN and so soon as the six several messuages or dwelling houses, erections, and buildings hereinafter agreed to be

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(*l*) Although the general practice is for the lessee to pay the whole expense of the lease, it is sometimes arranged as in the text, that he shall pay half only.

AGREEMENT FOR BUILDING LEASE. [*Another Form.*]

erected and built, shall be completely finished and made fit for habitation, occupation, and use, to the satisfaction of the architect or surveyor for the time being of the said A. B., and such architect or surveyor shall have granted his certificate in writing to that effect, the said A. B. will by one or more good and sufficient lease or leases demise to the said C. D. ALL THAT piece or parcel of land (*describing it*), and the messuages and buildings to be erected thereon, with their appurtenances, for the term of ninety-nine years, computed from the —— day of —— at the yearly rent of one peppercorn for the first year of the said term, the rent of £—— for the second year thereof, and the rent of £—— for the third year and remainder of the said term, such rent to be payable quarterly on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, the first of such quarterly payments to be made on the —— day of ——.

Provisions to be inserted in such lease.

II. EVERY such lease shall contain the following covenants on the part of the lessee: To pay the rent and the land-tax, sewers rate, tithe rent-charge, and all other taxes and assessments, parliamentary and parochial, or otherwise payable either by the landlord or tenant for or in respect of the premises; To keep the said premises in good and substantial repair, and deliver the same up in good and substantial repair at the end of the term; To paint the external wood, cement, and iron-work once in every four years, and the inside wood, iron, and other work before painted or usually painted, once in every seven years, with two coats of good oil colour; To insure and keep insured against fire, in the joint names of the lessor and lessee, in the —— office, or some other office in London or Westminster, the buildings comprised in such lease, in a sum at least equal to three fourth parts of the value of such buildings, and to produce to the lessor the policy of every such insurance and the receipts for every premium whenever the same shall be demanded; and that any money received by virtue of any insurance shall be forthwith expended in reinstating the premises, and if the same shall be insufficient for that purpose then to make up the deficiency out of his own monies; To permit the lessor or his agent, with or without workmen and others, at all reasonable times of the day during the said term to enter and view the state of the premises, and during the last seven years of the term to take

AGREEMENT FOR BUILDING LEASE. [*Another Form.*]

an inventory of the landlord's fixtures; Not to carry on any trade or business on the said premises, without the written consent of the lessor first had and obtained, and not to permit any encroachment upon the premises, or any right of light or other easement to be acquired over or upon the said premises by or in respect of any premises adjoining or near thereto; and also that the lessee will, within twenty-one days after every assignment or under-lease of the said premises, or any part thereof, shall have been made, give notice in writing thereof to the lessor or his agent, stating the short effect and particulars of such assignment or underlease: And every such lease shall contain a condition or proviso for re-entry by the lessor upon non-payment of rent for twenty-one days, or breach of any of the said covenants, and shall also contain all other covenants and provisions (if any) usually inserted in leases of the like nature.

Lessee may have either one lease or separate leases.

III. The said C. D. shall at his option have either one lease of all the said six dwelling-houses to be erected as aforesaid, or separate leases of any one or more thereof, and in case of separate leases the said rent shall be rateably apportioned between the premises to be comprised in each lease, the amount of such apportioned rents respectively to be fixed and ascertained by the architect or surveyor for the time being of the lessor.

Lessee to erect houses.

IV. The said C. D. will on or before the —— day of ——, 18—, erect, cover in, and complete, fit for habitation and use, upon the piece of ground hereby agreed to be demised, in a good, substantial, and workmanlike manner, with fit and proper materials, to be approved of by the architect or surveyor for the time being of the said A. B., and under his direction and inspection, and according to a plan, elevation, and detail drawings thereof, which have been signed by the parties hereto, and a copy whereof has been deposited with the said architect or surveyor, six brick-built and slated dwelling-houses, with the areas, forecourts, iron railings, gates, and garden walls, and other appurtenances thereto belonging.

V. (*Power to lessor to re-enter, suprà*, p. 59.)

Lessee to accept lease or leases.

VI. The said C. D. will accept a lease or leases of the said premises for the term, at the rent, and subject to the covenants and conditions hereinbefore expressed, and will execute a counterpart thereof, and will pay the costs and expenses of and incidental to the preparation and execution of this agreement, and of the said lease or leases and the counterparts thereof respectively (*m*).

AGREEMENT FOR BUILDING LEASE. [*Another Form.*]

IN WITNESS, &c.

No. XIII.

BUILDING LEASE *for* NINETY-NINE YEARS *granted by a* TENANT *for* LIFE *under a Power.*

BUILDING LEASE UNDER POWER.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part, WITNESSETH, that in consideration of the rent and lessee's covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor"), in exercise of the power for this purpose vested in him by an indenture, &c. (*date and parties*), [*or* by statute], and of all other powers (if any) him hereunto enabling, hereby appoints and demises unto the said C. D. (hereinafter called "the lessee") ALL THAT piece or parcel of ground, &c., TOGETHER WITH the messuage or dwelling-house now in course of erection thereon: AND TOGETHER also with full and free liberty to pass and repass, with or without horses, carts, and carriages, over the roadway made or intended to be made at the back of the said piece of ground, as shown in the plan drawn in the margin of these presents, To HOLD the same unto the lessee from the —— day of —— last, for the term of ninety-nine years thence next ensuing, YIELDING AND PAYING rent for the first year of the said term the rent of a peppercorn, if demanded, and, during the residue of the said term, the yearly rent of £20 sterling, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, free from all taxes, rates, and assessments whatsoever (except the

Witnessing part.

Lessor demises premises and a right of way to lessee for ninety-nine years.

Rent.

(*m*) If the lessor is to shew his title, the stipulations at the end of the last Precedent should be introduced instead of Clause VI. above. See pp. 59, 60.

landlord's property tax, if any), the first of such quarterly payments to be made on the —— day of ——: AND THE lessee hereby covenants with the lessor in manner following (that is to say), THAT the lessee will pay to the lessor the yearly rent hereby reserved, at the times and in manner hereinbefore appointed: AND ALSO will, during the said term, pay all taxes, rates, charges, and assessments which now are, or during the said term shall be, imposed or assessed upon the said premises hereby demised, or the landlord or tenant in respect thereof (except the landlord's property tax, if any): AND ALSO will, within the space of —— calendar months from the day of the date hereof, in a good, substantial, and workmanlike manner, and to the satisfaction of the lessor or his surveyor, complete so as to be fit for habitation and use, the messuage or tenement now in course of erection upon the said land: AND ALSO will, upon the completion of the said messuage, insure the same to at least two-thirds of the value thereof, in the joint names of the lessor and lessee, and either in conjunction or not with the name or names of any underlessee or underlessees, or other person or persons interested therein, in one of the public fire insurance offices in London or Westminster, and will during the said term keep the same so insured, and upon the request of the lessor or his agent, from time to time produce to him the policy of such insurance, and the receipt for the premium for the then current year, and if such messuage, or any part thereof, shall be destroyed or damaged by fire, will forthwith rebuild or reinstate the same under the direction of the lessor or his surveyor: AND ALSO will at all times during the said term keep the said messuage and premises in good and substantial repair, and the same in such good and substantial repair at the end or sooner determination of the said term, peaceably surrender and yield up unto the lessor together with all things in the nature of landlord's fixtures, which at any time during the said term shall be affixed and belong to the premises: AND ALSO will at all times during the said term, pay and allow a reasonable share and proportion for and towards the costs and expenses of making, supporting, and repairing the said roadway or intended roadway at the back of the said piece of ground, and all or any pavements, fences, and party walls, sewers, and drains, which now or at any time during the said term shall belong to the said premises or

Covenant by lessee to pay rent,

and to pay taxes,

and to build a dwelling-house within a specified time,

and to insure,

and to produce to the lessor receipts for premiums,

and keep premises in repair, and deliver up the premises in good repair at the end of the term,

and pay proportion of expense of repairing roadway, party walls, &c.

any part thereof, in common with other messuages or tenements or lands, and that such proportion shall be ascertained by the surveyor or agent of the lessor, and shall be recoverable as rent in arrear: And also that it shall be lawful for the lessor, or any person or persons to be deputed by him, with or without workmen or others, twice or oftener in every year during the said term, at reasonable times in the day time, to enter upon the said premises or any part thereof, to view the state and condition thereof, and also at any time during the last seven years of the said term to take a schedule of the fixtures and things in and upon the premises (not being tenant's fixtures), and also that it shall be lawful for the lessor and his tenants or occupiers of the houses adjoining to the said premises, and the workmen of such lessor, tenants, or occupiers, at reasonable times in the day time, to come into or upon the said premises, or any part thereof, to repair such adjoining houses as often as occasion shall require: And also that the lessor and his tenants shall have liberty of watercourse in and through the said premises hereby demised to carry off the water from his other houses, which are or may be contiguous or near to the said premises, and that if need be the tenants of such other houses shall be permitted to come into and upon the said premises hereby demised to empty and cleanse the cesspools, gutters, sewers, and drains of and belonging to such other houses: And also that the lessee will not, without the consent in writing of the lessor, exercise or carry on, or permit or suffer to be exercised or carried on upon any part of the premises hereby demised, any trade or business whatsoever, but will keep the said messuage and premises strictly as a private dwelling-house: And also will upon every assignment of the said demised premises, or any part thereof, within one calendar month after the execution of such assignment, give to the lessor's solicitors notice in writing thereof, specifying in such notice the name and residence of the assignee, and will produce the said assignment at the office of the said solicitors for registration, and in order that they may place and sign thereon a memorandum of such registration, and will pay to the said solicitors a fee of —— for such registration: Provided always that if the yearly rent hereby reserved or any part thereof shall at any time be unpaid for the space of twenty-one days after the same shall have become due, whether the same shall have been lawfully demanded

Lessor may enter premises at any time to view the condition thereof, and take a schedule of fixtures during last seven years.

Lessor and occupiers of adjoining houses may enter to repair such houses.

Lessor to have liberty of watercourse.

Lessee to use messuage only as a dwelling-house.

To give notice of assignments to lessor's solicitors.

Proviso for re-entry.

or not, or if there shall be any breach or non-observance of any of the lessee's covenants herein contained, then and in any such case it shall be lawful for the lessor to enter into and upon the said demised premises or any part thereof in the name of the whole, and to repossess the same as of his former estate: AND the lessor hereby covenants with the lessee that the lessee paying the rent hereby reserved, and observing and performing the covenants and conditions herein contained, and on his part to be observed and performed, shall and may quietly possess and enjoy the said premises during the said term without any lawful interruption from or by the lessor, or any person rightfully claiming from or under him. (*Devolution of rights and obligations, suprà*, p. 49.)

Lessor's covenant for quiet enjoyment by lessee.

IN WITNESS, &c.

No. XIV.

BUILDING LEASE.

BUILDING LEASE *to a person who* COVENANTS *to complete* TEN HOUSES *with provisions for* APPORTIONING RENT *between the* SEVERAL HOUSES. *The land demised is* PART *of a* CONSIDERABLE ESTATE *let on similar leases to* OTHER PERSONS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called "the lessors") (*lessors*) of the one part, and E. F., of, &c. (hereinafter called "the lessee") (*lessee*) of the other part, WITNESSETH, that in consideration of the expense incurred and to be incurred by the lessee in and about the erection and completion of the messuages or dwelling-houses hereinafter mentioned, and of the rent hereinafter reserved, and the lessee's covenants hereinafter contained, the lessors hereby demise unto the lessee, ALL THAT piece or parcel of land situate in —— Street in —— aforesaid, the dimensions and boundaries whereof are shown and delineated on the plan drawn in the margin of these presents and therein coloured pink, TOGETHER with the ten several messuages or dwelling-houses now in course of erection thereon, And together also with the use in common of all roads and sewers made or hereafter to be made for the accommodation of the owners and occu-

Lessors demise parcels

piers of the estate of the lessors: To HOLD the premises unto the lessee for the term of 99 years, to be computed from the 29th day of September, 18—, YIELDING AND PAYING therefor yearly during the said term the rent of £——, by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first payment to be made on the —— day of —— next; AND THE lessee hereby covenants with the lessors, in manner following, that is to say, THAT the lessee will pay the yearly rent hereby reserved on the days and in the manner hereinbefore appointed for payment thereof, and will also pay all taxes, rates, charges, and impositions whatsoever, whether parliamentary, parochial, or otherwise (except the landlord's property-tax), payable for the time being in respect of the said premises hereby demised, or any part thereof, or the landlord or tenant of the same in respect thereof; And also will forthwith well and sufficiently fence off the said premises hereby demised from the adjoining property: AND ALSO will within the space of —— from the date of these presents, at his (the lessee's) own expense, erect, complete, and finish in and upon the said premises, in a workmanlike and substantial manner, under the inspection and to the satisfaction of the surveyor for the time being of the lessors, the said messuages or dwelling-houses, with proper and suitable out-buildings, walls, yards, drains, and other conveniences, and with a paved footway in front of the same according to the specification and plan deposited with the lessors, and signed by the lessee, and that in erecting and building the said messuages or dwelling-houses, the description, substance, and scantlings of materials to be used shall be subject to the inspection and approbation of such surveyor as aforesaid: And also that he the lessee will not, without the previous license in writing of the lessors or their surveyor, erect, or set up, or suffer to be erected or set up on any part of the said premises hereby demised, any messuage or building other than and except the messuages or dwelling-houses hereby covenanted to be erected and except out-buildings to be occupied and used therewith, not exceeding 15 feet in height to the ridge of the roof, and 200 superficial feet in area, and will not without such license as aforesaid, make any alteration in the plan or elevation of the said messuages, or dwelling-houses, or in any party wall, or in the principal or bearing walls or timbers, or make or suffer to be made on the

BUILDING LEASE.

—— to lessee for ninety-nine years,

subject to rent.

Covenants by lessee to pay rent and taxes

to fence off premises,

to complete houses.

Not to erect any other buildings without license,

or alter plan or elevation

BUILDING LEASE.

or carry on noisy, noxious, or offensive trade.

said premises, any bricks, tiles, or other wares, or carry on or permit to be carried on, any noisy, noxious, or offensive trade or manufacture, or permit the said premises to be used for any illegal or immoral purpose, or for a public house, inn, tavern, or beer-shop, or otherwise for the sale of wine, malt liquors, or spirituous liquors, or do or suffer to be done thereon any act or thing whatsoever which may be an annoyance or disturbance to the lessors or their tenants in the neighbourhood: And also that the lessee will from time to time and at all times during the said term, well and substantially repair, maintain, cleanse, and pave, and in good and substantial repair and condition keep the messuages or dwelling-houses and other buildings so to be erected as aforesaid, and appurtenances belonging thereto, and the said footway in front, and the same so repaired, maintained, cleansed, paved, and kept will quietly surrender and yield up unto the lessors on the determination of the said term: And will pay a reasonable proportion (to be ascertained by such surveyor as aforesaid) of the expense of supporting and repairing all roads, ways, sewers, drains, party walls, watercourses, and easements, used or to be used, or capable of being used, in common by the occupiers of the said premises hereby demised, with the occupiers of the adjoining property, except the expense of making the main streets and main sewers which are intended to be made by and at the expense of the lessors, but including the expense of maintaining, cleansing, and keeping in repair the same when made, unless and until such expense shall be defrayed by or out of rates to be levied for that purpose, which rates the said lessee will be liable to pay under the covenant in that behalf hereinbefore contained: AND ALSO will paint twice, in oil, in a proper and sufficient manner, once in every ten years of the said term, the inside of the said messuages and buildings usually painted, or which ought to be painted: AND ALSO once in every five years of the said term, the outside of the same, usually painted or which ought to be painted: AND FURTHER, that it shall be lawful for the workmen of the lessors, or of their tenants or occupiers of houses adjoining or near to the said premises hereby demised, at all reasonable times of the day, to enter into and upon the said demised premises and the messuages and buildings so to be erected as aforesaid, for the purpose of cleansing drains and for repairing any of the adjoining houses as often as occasion shall

To repair and surrender in good repair at the end of term,

to pay a reasonable proportion of expense of repairing common roads, &c.

to paint inside every ten years, and outside every five years.

That workmen from adjoining houses may enter to cleanse drains, &c.

require: AND that the lessors and their tenants shall have free liberty of watercourse in, through and under the said demised premises to carry off the water and sewage from the adjoining or contiguous property: AND that the lessee will at all times during the said term, insure and keep insured from loss or damage by fire, the messuages and buildings to be so erected as aforesaid, to the amount of four-fifths at least of the value thereof, such value to be ascertained by such surveyor as aforesaid, whose certificate of value shall be conclusive, in the names of the lessors and lessee (or in such other manner as the lessors shall, on the request of the lessee, approve) in the —— insurance office, or in some other insurance office to be previously approved in writing by such surveyor as aforesaid, and will from time to time upon the request of the lessors or such surveyor as aforesaid, produce and show to them or him the policy of such insurance and also the receipt for the premium of such insurance for the next ensuing year: AND ALSO that he the lessee will, as often as the said messuages and buildings so to be erected as aforesaid, or any of them, shall be destroyed or damaged by fire or other accident, immediately lay out and apply the money to be received by virtue of any such insurance as aforesaid, and also all such other sums of money (if any) as shall be necessary for that purpose, in well and substantially rebuilding, repairing, and reinstating the same under the inspection and to the satisfaction of such surveyor as aforesaid: AND ALSO that the lessee will upon every assignment of the said premises hereby demised, or any part thereof, or within twenty-one days thereafter, deliver a notice of such assignment to the lessors or their solicitor, setting forth the names and description of the parties to every such assignment, and the particulars and effect thereof: AND ALSO that it shall be lawful for the lessors or their surveyor or agent for the time being, with or without workmen or others, from time to time, and at all reasonable times of the day during the said term, to enter into and upon the said demised premises and the messuages and buildings to be erected thereon as aforesaid, or any part thereof, and inspect and view the condition thereof, and during the last seven years of the said term to take an inventory of the fixtures and other things then in or about the same, and if any defect or want of reparation shall be on any such inspection found and discovered, to give to the lessee or

That lessors may have liberty of water-course.

To insure,

to give notice to lessors of all assignments.

That lessors may enter to view state of repair.

leave for him at or upon the said premises or some part thereof, notice in writing to make good and restore the same, and that the lessee will, within six calendar months next after such notice, well and sufficiently make good and restore the same accordingly:

Power of re-entry on non-payment of rent or breach of covenants.

PROVIDED ALWAYS, that if the said yearly rent hereby reserved, or any part thereof, shall at any time be unpaid by the space of twenty-one days after the same shall have become due, whether the same shall have been lawfully demanded or not, or in case of the breach or non-observance by the lessee of any of the covenants herein on his part contained, then and in any such case it shall be lawful for the lessors, notwithstanding the waiver of any previous cause or right of re-entry, to enter into and upon the said demised premises and the messuages and buildings so to be erected as aforesaid, or any of them or any part thereof, in the name of the whole, and to repossess, retain, and enjoy the same as of their former estate:

Proviso for apportionment of rent between the several houses on assignment.

PROVIDED ALWAYS, and it is hereby agreed and declared, that if the lessee (including any person or persons in favour of whom an apportionment of rent shall then already have been made under this present proviso, his or their executors, administrators, or assigns) shall at any time or times during the said term hereby granted, assign any one or more of the messuages or tenements so to be erected as aforesaid (not being the whole of the premises then vested in him or them), then and in every such case such surveyor as aforesaid shall, if and when requested so to do by any party entitled under such assignment, determine what portion of the rent hereby reserved shall thenceforth be payable in respect of the premises comprised in such assignment, and what portion thereof shall thenceforth be payable in respect of the premises vested in the person or persons making the same assignment, and a memorandum of such apportionment, signed by the lessors or the said surveyor, shall be endorsed on these presents, and the counterpart thereof or other the document under which the apportioned rent shall be payable, and from and after the endorsement of such memorandum the person or persons to whom such assignment shall be made shall hold the premises comprised therein, subject only to the payment of the apportioned rent so to be made payable in respect thereof as aforesaid, and to the observance and performance of the covenants and conditions herein contained on the part of the lessee to be observed and performed so far as the same shall be applicable to the last-mentioned premises in the same manner as if a separate lease of the same premises had been granted to him or them, at and under such last-mentioned apportioned rent, covenants, and conditions, so far as the same shall be applicable as aforesaid respectively, and the person or persons making such assignment as aforesaid shall hold the premises remaining vested in him or them, subject only to the payment of the apportioned rent so to be made payable in respect thereof as aforesaid, and to the observance and performance of the covenants and conditions herein contained on the part of the lessee so far as the same shall be applicable to the last-mentioned premises, in the same manner as if a separate lease of the same premises had been granted to him or them, at and under such last-mentioned apportioned rent, and subject to such covenants and conditions so far as the same shall be applicable as aforesaid respectively, and so *toties quoties* upon every subsequent division by assignment of part of the premises held under an apportioned rent: PROVIDED ALSO, and it is hereby agreed and declared, that no apportioned rent shall in any case be less than the sum of thirty shillings or exceed one fifth part of the rack rent value of the land in respect whereof the same shall be apportioned, and the buildings erected or to be erected thereon, when finished and fit for habitation, and that until all the said messuages and tenements hereinbefore covenanted to be erected shall be completed and rendered fit for habitation, the lessee shall only be entitled to apportionment in respect of such of the said messuages or tenements as shall be so completed and rendered fit for habitation: (*Covenant by lessors for quiet enjoyment, and devolution of rights and obligations, suprà*, p. 49).

IN WITNESS, &c.

No. XV.

LEASE OF PREMISES FOR MAKING AND SELLING CEMENTS.

LEASE *of a* MANUFACTORY *and* PREMISES *for* CARRYING *on the* BUSINESS *of making and selling* CEMENTS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called "the lessor"), of the one part, and C. D., of, &c. (hereinafter called "the lessee"), of the other part, WITNESSETH, that in consideration of the rent and royalties hereinafter reserved, and of the covenants hereinafter contained, and on the part of the lessee to be observed and performed, the lessor hereby grants and demises unto the lessee: FIRST, ALL that tenement chiefly used as an engine house, situate in and fronting —— Street, in the city of ——, which said premises are more particularly delineated in the map or plan drawn in the margin of the first skin of these presents, and therein coloured blue: AND THE USE and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises: AND SECONDLY, ALL and singular the manufactories, buildings, boiler houses, kilns, erections, offices, buildings, and premises, situate between —— Street and —— Quay, in the said city of ——, which said premises secondly hereinbefore described are more particularly delineated in the said map or plan, and therein coloured red: AND THE USE and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises secondly hereinbefore described (EXCEPTING nevertheless and reserved unto the persons in favour of or to whom the same have previously to the date of these presents been excepted and reserved, all the rooms which form the upper storey of the several buildings hereby demised, and the absolute use and enjoyment thereof, whether for the purpose of business or otherwise howsoever, and unto the same persons and their servants, workmen, or any other persons on their behalf, and (as to the piece of land coloured brown in the said map, either on foot, or by means of carts or other vehicles, horses or other animals), full and free right and liberty of ingress, egress, regress, passage, and way at all times over the said piece of land coloured brown on the said plan from the point at which the said piece of land adjoins the —— Quay, and

Lessor demises to lessee.

Parcels.

Use of machinery, &c.

by all the other internal and external passages and ways by which the said rooms respectively are or can be now approached from the said street from the point aforesaid): To HOLD the said premises unto the lessee for the term of fifteen years from the 25th day of March next: YIELDING AND PAYING during the said term the clear yearly rent of £200: AND ALSO YIELDING AND PAYING during the said term a royalty of —— per bushel in respect of all cements which shall be made or manufactured and sold by the lessee, or any person on his behalf, either on the premises hereby demised, or in any other place or places whatsoever, such rent and royalties to be paid by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, clear of all deductions (except the property or income tax), the first quarterly payment of the said rent and royalties respectively to be made on the —— day of —— next: AND THE LESSEE hereby covenants with the lessor in manner following (that is to say): THAT the lessee will pay the rent and royalties hereby reserved at the times and in manner aforesaid, and will also pay all present and future taxes, charges, rates, and assessments payable in respect of the said premises hereby demised, by authority of parliament or otherwise (except the property or income tax): AND ALSO will, at all times during the said term of fifteen years, carry on within the said city of —— the business of making or manufacturing cements, and selling the same there and elsewhere to the best possible advantage: AND ALSO will, at all times during the said term, keep proper books of account on the said premises hereby demised, or on some part thereof, and shall from time to time make such entries therein as shall clearly show the quantity of cement which shall from time to time be manufactured and sold by the lessee, or any person on his behalf, and also the amount of royalties which shall from time to time become payable in respect thereof, and also all other matters which ought to be entered in such books in relation to the said business: AND ALSO will, on the first day of every month during the said term, at his own expense, supply the lessor with a proper and faithful account in writing of all the cements which shall have been manufactured and sold as aforesaid during the then preceding month, together with all vouchers and such other evidence as

LEASE OF PREMISES FOR MAKING AND SELLING CEMENTS.

To hold to lessee for fifteen years,

at yearly rent,

and subject to royalties for cements made and sold.

Covenant by lessee to pay rent and royalties,

and to pay rates and taxes,

to carry on business of making and selling cements during the term,

to keep books of account,

to supply accounts.

LEASE OF PREMISES FOR MAKING AND SELLING CEMENTS.

may be required in order clearly to show the accuracy of such account, and shall, if and when required so to do by the lessor, further verify every such account by the statutory declaration of the lessee: AND that in case the said rent and royalties hereby reserved, or any of them, or any part thereof respectively shall, at any time or times during the said term, fail to be paid at the times and in the manner hereinbefore provided for this purpose, then (in addition to the powers of distress and entry which he may possess independently of any special clause to this effect) it shall be lawful for the lessor, into or upon the said premises hereby demised, or any part thereof, or any other premises wherein or whereupon the said business may, for the time being, be carried on, to enter and distrain for the same rent and royalties so in arrear, and the distress or distresses there found to impound and detain, sell and dispose of in such manner as landlords are by law authorised to do in respect of arrears of rent reserved upon common demise, to the intent that the lessor may by such distress or distresses be from time to time satisfied all such rent and royalties as may be so unpaid as aforesaid, and all costs and expenses occasioned by non-payment or default in payment thereof: AND ALSO that the lessee will insure, and at all times during the said term keep insured, all the cements and other stock in trade which shall for the time being be upon the said premises hereby demised, or any other such premises as aforesaid or which otherwise may be engaged or employed in the said business, in some insurance office or offices in London or Westminster: AND ALSO in the event of any such cement or stock in trade being destroyed by fire, will lay out the moneys which shall arise by reason of the insurance thereof in replacing all such cements and stock in trade as may be so destroyed: AND ALSO will, at all times during the said term, keep in good and substantial repair and condition, all and singular the buildings and machinery, utensils, implements, and things hereby demised, and all other the erections and buildings which shall at any time during this demise be erected or set up upon the said premises, and the same in such good and substantial repair will, at the expiration or sooner determination of the said term, peaceably and quietly surrender and yield up to the lessor (reasonable wear and tear thereof in the meantime only excepted): AND ALSO will permit the lessor with or without work-

Power of distress.

Covenant by lessee to insure,

to keep in repair,

and to deliver up premises in good repair at expiration of term.

men and others, at any time or times during the said term, into and upon the said premises, or any part or parts thereof, to enter and view and examine the state and condition thereof, and if any decays, defects, or wants of reparation shall be found upon such view, to give or leave a notice in writing at or in the said demised premises, or any part thereof, to repair and amend the same within the space of one calendar month next following, within which space of one calendar month next after every such notice the lessee will repair and amend the same decays, defects, and wants of reparation accordingly: PROVIDED ALWAYS, and it is hereby declared, that if the said rent and royalties hereby reserved, or any of them, or any part thereof respectively shall be in arrear for the space of fourteen days next after any of the said days on which the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if there shall be any breach or non-observance of any of the covenants hereinbefore contained, and on the lessee's part to be observed and performed, or if the lessee shall become bankrupt, or shall compound or arrange with his creditors, or suffer his effects to be taken in execution, then and in any of the said cases it shall be lawful for the lessor, into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, repossess, and enjoy, as in his former estate. (*Covenant by lessor for quiet enjoyment, and devolution of rights and obligations, suprà*, p. 49.)

Power of lessor to enter and view condition of premises.

Power of re-entry on non-payment of rent or royalties, or in breach of covenants, &c.

Covenant by lessor for quiet enjoyment.

IN WITNESS, &c.

No. XVI.

UNDER-LEASE.

UNDERLEASE *for the whole of the term granted by the original Lease, except ten days, at an* IMPROVED RENT. UNDERLESSEE *covenants to observe all the covenants in the original Lease* (*k*).

Parties.

Recital of lease.

Agreement to grant underlease.

Witnessing part.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part. WHEREAS by an indenture of lease, dated, &c. (*date and parties*), the messuage and hereditaments hereinafter described and intended to be hereby demised were demised by the said —— unto the said A. B. for the term of eighty years computed from the —— day of ——, at the yearly rent of £—, and subject to the lessee's covenants therein contained: AND WHEREAS the said A. B. has agreed to grant to the said C. D. an underlease of the said premises in the manner hereinafter expressed, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the rent hereinafter reserved, and the covenants of the said C. D. hereinafter contained, the said A. B. hereby demises unto the said C. D. ALL &c. (*parcels*), AND all other (if any) the premises comprised in the said indenture of lease, TO HOLD unto the said C. D. for all the residue now unexpired of the said term of —— years granted by the said indenture of lease, except the last ten days of the said term, YIELDING AND PAYING, &c. (*reservation of rent*). And the said C. D. hereby covenants with the said A. B. that he the said C. D., his executors, administrators, or assigns, will pay the rent hereby reserved, at the times and in manner aforesaid: AND ALSO will at all times during the term hereby granted observe and perform all the covenants and conditions contained in the said recited indenture of lease, and on the lessee's part to be observed and performed, except the covenant for payment of the rent thereby reserved, and will keep indemnified the said

Underlease

Rent.

Covenants by underlessee to pay rent above reserved and to observe covenants in superior lease and indemnify underlessor therefrom,

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(*k*) The above Precedent is adapted to a case where it is intended that the underlessee shall take upon himself precisely the same obligations as are imposed on his lessor by the superior lease so as to be a complete indemnity to the latter.

A. B., his executors, administrators, and assigns, from and against the said covenants and conditions and all claims and demands in respect thereof: AND in particular will, at the expiration or sooner determination of the term hereby granted, deliver up the said premises to the said A. B., his executors, administrators, or assigns, in the same state and condition as the same ought to be in at the end of the term granted by the said indenture of lease under the covenant in that behalf entered into by the said A. B. in and by the said indenture, and so that the said A. B., his executors, administrators, or assigns shall not under such covenant have to pay any moneys to his or their landlord, or to suffer any loss or injury on account of repairs or dilapidations: (*Proviso for re-entry for non-payment of rent or breach of covenants, suprà, p.* 49, *substituting for "lessor"* the said A. B., his executors, administrators, or assigns, *and for "lessee"* the said C. D., his executors, administrators, or assigns): And the said A. B. hereby covenants with the said C. D., that he the said A. B., his executors, administrators, or assigns, will at all times pay the said yearly rent of £—— reserved by the said indenture of lease, and keep the said C. D., his executors, administrators, and assigns, indemnified therefrom, and from all actions, claims and demands in respect thereof: And also that the said C. D., his executors, administrators, or assigns, paying the rent hereby reserved, and observing and performing the covenants herein contained, and on his or their part to be observed and performed, shall and may peaceably and quietly possess and enjoy the premises hereby demised during the term hereby granted without any interruption by the said A. B. or any person lawfully or equitably claiming from or under him: AND the said A. B. hereby acknowledges the right of the said C. D. to production and delivery of copies of the said indenture of lease, and undertakes for the safe custody thereof.

and in particular to deliver up premises at end of term in the state in which same ought to be in according to superior lease.

Covenant by under-lessor to pay superior rent,

and for quiet enjoyment

Acknowledgment of right of under-lessee to production of superior lease.

IN WITNESS, &c.

No. XVII.

AGREEMENT FOR LEASE BY BUILDER.

AGREEMENT *for a* LEASE *of a* HOUSE IN TOWN *in consideration of a* PREMIUM. *The* LESSOR *who is a* BUILDER *agrees to complete the house before a certain day.*

Parties.

MEMORANDUM OF AGREEMENT, dated the —— day of ——, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, whereby it is agreed as follows:—

Agreement to grant lease, to be in form set out in schedule. Agreement by lessor to complete house. Lessee to pay premium.

The said A. B. agrees, in consideration of the sum of £—— by way of premium to be paid to him by the said C. D., as hereinafter mentioned, and also in consideration of the rent and lessee's covenants to be reserved and contained by and in the lease hereinafter mentioned, to grant to the said C. D. a lease of all that, &c. (*describe house*) for a term of —— years, to be computed from the —— day of —— next, at the yearly rent of £——, payable quarterly on the usual quarter days, such lease to contain the covenants, clauses, and conditions, and be in the form set out in the first schedule hereto: AND the said A. B. also agrees to complete the said messuage in accordance with the specifications set out in the second schedule hereto, on or before the —— day of —— next: AND the said C. D. agrees to accept the said lease, and to pay the said premium of £—— in manner following, viz., the sum of £—— on the signing hereof, and by way of deposit, and the remaining sum of £—— on the —— day of —— next, on which day the lease and counterpart shall be executed: AND IT IS AGREED that the intended lease and counterpart shall be prepared by the lessor's solicitor at the cost of the lessee, who shall not require any evidence of the lessor's title. AND IT IS ALSO AGREED that if the said C. D. shall not perform his part of the above conditions the sum of £—— paid by him shall be forfeited to the said A. B.

Deposit to be forfeited on non-performance by lessee of his part of agreement.

AS WITNESS, &c.

THE FIRST SCHEDULE

(*setting out the intended lease*).

THE SECOND SCHEDULE

(*specification of work to be done*).

No. XVIII.

LEASE *of a* FARM *from* YEAR *to* YEAR (*adapted to the alternative cases of the parties wishing to adopt, with slight variations, or to exclude the Agricultural Holdings Act,* 1875, *and also adapted to a Lady-day or Michaelmas taking*) (*l*).

OF A FARM FROM YEAR TO YEAR.

MEMORANDUM OF AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*landlord*), of the one part, and C. D., of, &c. (*tenant*), of the other part.

Parties.

1. THE said A. B. (hereinafter called "the landlord") hereby agrees to let, and the said C. D. (hereinafter called "the tenant") hereby agrees to take, THE farm and lands situate in the parish of ——, in the county of ——, called —— Farm, particularly described in the schedule hereto, the tenancy to be from year to year, commencing on the —— day of ——, and determinable at the end of any year by a year's notice to quit given by either party (*m*); AT the yearly rent of £——, payable by equal half-yearly payments on the —— day of ——, and the —— day of ——, in every year, the first payment thereof to be made on the —— day of —— next, and subject to the conditions hereinafter expressed.

Agreement to let and take.

2. ALL timber and timber-like trees, tellars, pollards, and saplings, gravel, and stone in and upon the said lands are excepted and reserved out of this demise; AND the landlord shall be at liberty by himself, his agents, and servants, to enter into and upon the said lands at all reasonable times for the purpose of marking, felling, cutting, digging, and carrying away the same, paying reasonable compensation to the tenant for all damage done thereby.

Exceptions and reservations.

Timber, &c.

3. THE right to kill and take game, sport and fish over the said lands is also reserved to the landlord, and all persons authorised

Game.

(*l*) It will be borne in mind that the terms of a tenancy vary according to the custom of the country.

(*m*) If a half-year's notice to quit is stipulated for, substitute for "a year's notice," "a half-year's notice."

OF A FARM FROM YEAR TO YEAR.

by him in that behalf, but subject as to ground game to the provisions of the Ground Game Act, 1880 (*o*).

Mutual agreements to observe conditions, and agreement by landlord for quiet enjoyment by tenant.

4. THE PARTIES hereto hereby mutually agree to observe the conditions hereinafter expressed, and the landlord further agrees that the tenant paying the rent and observing the said conditions on his part, may quietly hold and enjoy the premises hereby demised without any interruption by the landlord or any person rightfully claiming under him.

Tenant to pay rent, rates and taxes.

5. THE TENANT shall pay the rent hereby reserved at the time and in the manner aforesaid, and shall also pay the [tithe rentcharge and] all rates, taxes, and assessments payable in respect of the said premises during the tenancy, except the land tax and the landlord's property tax [and the tithe rentcharge], and no deduction is to be made from the rent in respect thereof.

To pay out-going tenant according to valuation.

6. UPON taking possession of the farm the tenant shall pay or allow to the out-going tenant according to a valuation for the matters and things in respect whereof such outgoing tenant is entitled to payment or allowance according to the terms of his tenancy (*p*).

To reside in the farm-house and not to assign or underlet.

7. THE TENANT shall reside in the farmhouse, and shall not assign or underlet the said premises without the landlord's consent in writing.

Repairs to be done by tenant.

8. THE TENANT shall keep the farmhouse and buildings (except the main walls, main timber and roof) in good and tenantable repair, and so leave the same at the end of the tenancy. He shall also from time to time, at the proper season, well and sufficiently lay, cut, repair, and keep repaired, all hedges, mounds, rails, gates, and fences, and open, scour, cleanse, and throw all ditches, watercourses, and drains, and so leave the same at the end of the tenancy.

To preserve winged game.

9. THE TENANT shall preserve the game hereby reserved to the landlord, and (subject to the provisions of the Ground Game

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(*o*) If only a concurrent right to sport is to be reserved, substitute as follows: The right to shoot, fish, or otherwise sport over the said lands, is reserved to the landlord, and all persons authorised by him, but this reservation shall not prevent the tenant from also shooting, fishing, or sporting thereon.

(*p*) Sometimes a more elaborate arrangement is necessary. See the special clauses as regards valuations between outgoing and incoming tenant in Precedent No. XIX., *infrà*.

Act, 1880) shall not allow any person to shoot or sport over the said lands without the landlord's permission. He shall also sign all notices not to trespass required by the landlord.

OF A FARM FROM YEAR TO YEAR.

10. THE TENANT shall not fell, lop, or top, or suffer to be felled, lopped, or topped, any timber or other trees on the said lands without the landlord's consent, except that he may lop pollards usually lopped, but shall preserve all such trees from spoil or damage by cattle or otherwise. He shall also at his own expense, plant, fence, and protect all fruit trees supplied by the landlord.

To preserve trees.

11. THE TENANT shall do his best to prevent new footpaths from being made over any of the said lands, or any waste from being enclosed on the footpaths of the said lands.

To prevent new footpaths from being made or waste from being enclosed.

12. THE TENANT shall not mow any meadow or pasture land for hay more than once in the year, nor later than usual and customary in the neighbourhood, and shall not break up or convert into tillage any meadow or pasture land without the landlord's written consent, and if he shall do so he shall during the remainder of the tenancy pay the additional yearly rent of £50 for every acre of land which shall be so broken up or converted into tillage, and so in proportion for any less quantity than an acre, such additional rent to be payable half-yearly on the days aforesaid, and to be recoverable by distress or otherwise as rent hereby reserved. He shall not take two white crops in succession, and generally shall manage and cultivate the farm in a husbandlike manner, so as not to impoverish any part thereof, and shall leave the same at the end of the tenancy in good heart and condition.

Not to mow more than once a year, not to break up pasture land under a penalty by way of additional rent.

Not to take two white crops in succession and cultivate properly.

13. THE TENANT shall spend and consume on the said farm and lands all the hay, straw, green crops, and fodder, dung and manure produced and made thereon; the dung and manure to be spread over the lands in a husbandlike manner. EXCEPT that he shall be at liberty to remove hay and straw, if for every ton of hay or straw so removed he brings and consumes on the said farm at least three tons of good rotten dung or other manure of equal goodness.

To consume all hay, &c. on farm

but may remove hay on bringing in other manure.

14. (*If the taking is a Lady-day one.*) THE TENANT shall in the last year of the tenancy prepare and sow in proper season with wheat such portion of the arable land as shall be in due course for the same, and shall sow good grass seed with the last year's

In last year of tenancy to sow arable with wheat, and grass seeds with Lent corn.

Incoming tenant may on last year enter on parts of arable to prepare for crops.

Hay, &c., to be left for incoming tenant.

Lent crops, and harrow in the same: He shall also permit the landlord or incoming tenant to enter upon the arable land (except such parts thereof as shall be in due course for wheat or in clover or root crops), at any time after the 1st day of January preceding the end of the tenancy, for the purpose of preparing the same for the next year's crops: He shall also at the end of the tenancy leave for the landlord or incoming tenant all the hay, straw, and roots remaining unconsumed, he, the tenant, being paid or allowed for the matters and things aforesaid as hereinafter is provided.

To stack in barns, &c., produce of last year.

Incoming tenant may enter in last year of tenancy on parts of farm.

(*If the taking is a Michaelmas one.*) THE TENANT shall stack in the barns and rickyards in the last year of the tenancy all the corn, grain, and hay produced on the said premises (the corn and grain to be there thrashed out, and all the hay, straw, chaff, stubble, and fodder to be there consumed by cattle in a husbandlike manner, and the dung, manure, compost, or soil therein arising to be left on the premises), for which purpose the tenant shall have the use of such of the barns and yards as may be necessary until the 1st day of May next after the end of the tenancy: AND in the last year of the tenancy the landlord or his incoming tenant shall be at liberty to enter upon the lands for a wheat season so soon as the crop for that year is cleared off, in order to prepare the same for such season, and may also sow seeds among the Lent or summer corn, which the tenant shall harrow in: AND the tenant shall also leave for the landlord or his incoming tenant all the hay, straw and roots remaining unconsumed, being paid or allowed for the same at a spending price.

Repairs to be done by landlord.

Insurance against fire.

15. THE LANDLORD shall during the tenancy keep in good and tenantable repair the main walls, main timbers, and roofs of the farmhouse and buildings upon receiving notice from the tenant that any such repairs are wanted (*q*). He shall also find sawn timber in the rough for all repairs of fences and other external repairs to be done by the tenant. He shall also keep the farmhouse and buildings insured against loss or damage by fire in a sum sufficient to cover the value thereof, and all money received under such insurance shall be forthwith laid out in rebuilding and reinstating the premises in respect of which the same shall have been received.

(*q*) See Makin *v.* Watkinson, L. R. 6 Ex. 25.

16. (*If the taking is a Michaelmas one.*) THE LANDLORD or the incoming tenant shall take the turnips and fallows at the end of the tenancy, and shall pay the tenant for labour and seeds properly performed and expended upon such turnips and fallows.

OF A FARM FROM YEAR TO YEAR.

17. AT the end of the tenancy the landlord or the incoming tenant shall allow to the outgoing tenant for the following matters and things:—

Allowances to be made to tenant at the end of tenancy

(*If the taking is a Lady-day one.*) For the wheat and grass seeds sown by him during the last year, and for the cost of harrowing in the seeds, and for the winter feed of the arable lands given up by him to the landlord or incoming tenant:

(*If the taking is a Michaelmas one.*) For the labour and seed properly performed and expended upon the turnips and fallows, to be taken to by the landlord or incoming tenant, as before provided:

(*Whether the taking be a Lady-day or Michaelmas one.*) For the proportionate value of such of the tillages and manurings done during the last two years of the tenancy as shall remain unexpended and for the benefit of the landlord or the incoming tenant:

For the unconsumed hay, straw, and roots at a spending price.

18. IF any rent hereby reserved shall be in arrear for forty days, whether payment thereof shall have been legally demanded or not, or if there shall be any breach of any of the conditions herein contained and on the tenant's part to be observed or performed, or if the tenant shall become bankrupt, then and in either of such cases the landlord may re-enter and determine the tenancy without giving any notice to quit.

Conditions of re-entry.

19. (*If the Agricultural Holdings Act is adopted with variations.*) THE Agricultural Holdings (England) Act, 1875, shall apply to this contract of tenancy, save and except that the allowances to be made to the tenant under Article 16 shall be in lieu of any claim on his part to compensation under the said Act for unexhausted improvements of the 3rd class [and save and except also that he shall not be entitled to compensation for unexhausted improvements of the 2nd class unless the same shall have been made with the same consent as is by the

Agricultural Holdings Act, 1875, to apply with certain variations.

said Act required for improvements of the 1st class]. And if any difference shall arise as to the amount to be allowed under the last preceding clause, the same shall be settled by a reference as if it were a difference as to compensation under the said Act.

Account and valuation at end of term.

19*a*. (*If the Act is excluded.*) At the end of the tenancy an account shall be taken between landlord and tenant as follows: 1st, a valuation shall be made of the several matters and things which are hereinbefore agreed to be paid or allowed for by the landlord or his incoming tenant, and the amount of such valuation shall be debited to the landlord; and 2ndly, the valuers shall determine whether any and (if so) what sum of money ought to be paid or allowed by the tenant to the landlord for any breach by the tenant of the terms and conditions of the tenancy, or in respect of the condition in which he has left the farm, and the same, together with any arrears of rent or of rates and taxes which may be owing from the tenant, shall be debited to the tenant: And the balance which upon such account shall appear due from one party to the other shall be forthwith paid with interest thereon after the rate of £4 per cent. per annum, computed from the end of the tenancy.

Mode of valuation

19*b*. (*If the Act is excluded.*) Every valuation under these presents shall be made by two indifferent persons, one to be named by each party interested, and in case of their disagreement, then by an umpire, to be chosen by the valuers previously to entering upon the consideration of the matters referred to them, and in case either of the parties shall neglect to name a valuer for the space of seven days next after a notice in writing so to do shall have been given to him by the other party, or shall name a valuer who shall refuse to act, then the valuation may be made by the valuer named by the other party alone. The valuers or their umpire shall have power to decide any questions which may arise in the course of their valuation, and in particular any questions as to what matters or things are proper subjects of valuation or allowance according to the true intent and meaning of this agreement. Every reference to valuers under this agreement shall be deemed a reference to arbitration within the provisions of the Common Law Procedure Act, 1854, and shall have all the incidents and consequences of an arbitration under that Act.

19*c*. (*If the Act is excluded.*) No part of the Agricultural Holdings (England) Act, 1875, shall apply to this contract of tenancy.

Agricultural Holdings Act not to apply.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XIX.

SPECIAL CLAUSES *as regards* VALUATIONS *between an* OUTGOING *and* INCOMING TENANT.

CLAUSES AS TO VALUATIONS.

(A) *Where the Agricultural Holdings Act does not apply.*

Recital of agreement with outgoing tenant as to allowances at the end of tenancy according to valuation.

WHEREAS the farm is at present in the occupation of X. Y. (hereinafter called the outgoing tenant), under an agreement dated the —— day of ——, 18—, and he has received notice to quit on the —— day of —— next, and by the said agreement it is provided that the landlord or his incoming tenant shall at the end of the said tenancy pay or allow to the outgoing tenant, according to valuation, for the following matters and things, namely—(*specifying them*): And it is also provided that at the end of the tenancy an account shall be taken between the landlord and outgoing tenant as follows: 1st, that a valuation shall be made of the several matters and things which are thereinbefore agreed to be paid or allowed for by the landlord or his incoming tenant, and the amount of such valuation shall be debited to the landlord; and 2ndly, that the valuers shall determine whether any and (if so) what sum of money ought to be paid or allowed by the outgoing tenant to the landlord for any breach by the tenant of the terms and conditions of the tenancy, or in respect of the condition in which he has left the farm, and the same together with any arrear of rent or of rates and taxes owing from the tenant shall be debited to the outgoing tenant, and that the balance which upon such account shall appear due from one party to the other shall be forthwith paid with interest thereon

Agreement that incoming tenant shall account with outgoing tenant on the terms of the above recited agreement, and that any money allowed to incoming tenant for the state of the farm shall be laid out by him on the farm.

after the rate of £4 per cent. per annum, computed from the end of the tenancy (*r*) : Now IT IS HEREBY AGREED between the landlord and tenant under this agreement (hereinafter called "the incoming tenant"), that whatever sum of money shall under the said recited agreement become payable to or from the outgoing tenant shall be paid or received (as the case may be) by the incoming tenant, and the valuations to be made under the said agreement shall be binding on the incoming tenant: AND IT IS ALSO AGREED that if any sum of money shall by the valuation to be made as aforesaid be awarded to be paid or allowed by the outgoing tenant to the landlord or the incoming tenant for any breach by the outgoing tenant of the terms and conditions of the tenancy or for the state of the farm, and which sum of money shall accordingly be brought into the account, and paid or allowed for as aforesaid, the incoming tenant shall lay out an equal sum on the farm forthwith, or as soon as the same can profitably be laid out thereon: AND whatever sum of money (if any) shall be found owing by the outgoing tenant for arrears of rent or of rates and taxes as aforesaid, and which shall accordingly be brought into the account and allowed for as aforesaid, shall be forthwith applied by the incoming tenant in the payment of such arrears.

(B) *Where the Agricultural Holdings Act does apply.*

Recital of agreement with outgoing tenant as to allowance at the end of the tenancy.

WHEREAS the said farm is now in the occupation of X. Y. (hereinafter called "the outgoing tenant"), under an agreement dated the —— day of ——, 18—, and he has received a notice to quit which will expire on the —— day of —— next; and by the said agreement it is provided, &c. (*set out provisions* (*if any*) *entitling outgoing tenant to allowances*). AND WHEREAS the Agricultural Holdings (England) Act, 1875, applies to the holding under the said recited agreement: AND WHEREAS the outgoing tenant has not executed any improvements of the 1st class mentioned in the said Act, with the consent of the landlord, so as to be entitled to claim compensation on account thereof, but he may have some claim to compensation for

Recital that Agricultural Holdings Act applies to the tenancy.

That claims may be

(*r*) The recital must of course be made to agree with the actual terms of the agreement. It is above assumed that the clauses are the same as those in the new agreement.

improvements of the 2nd or 3rd class: Now IT IS HEREBY AGREED between the landlord and the tenant under this agreement (hereinafter called "the incoming tenant") that the incoming tenant shall pay to the outgoing tenant the sum of money which the outgoing tenant shall be entitled to receive, either by way of allowance for the matters and things aforesaid, under the said recited provision in that behalf contained in the said agreement of the —— day of ——, as aforesaid, or by way of compensation for improvements of the 2nd or 3rd class under the said Act, after making such deduction as under the said agreement or the said Act ought to be made therefrom; AND FURTHER, that if any sum of money shall be awarded to be paid or allowed by the outgoing tenant by way of deduction as aforesaid, under the said agreement or the said Act, for waste or breaches of agreement by him or in respect of the state in which the farm shall be left, the incoming tenant shall, as soon as possible, expend an equal sum of money on the farm for the benefit thereof; and if any sum of money shall be allowed by way of deduction under the said agreement or the said Act, for arrears of rent or of rates or taxes, the same shall be forthwith applied in payment of such arrears.

CLAUSES AS TO VALUATIONS.

made to compensation for 2nd or 3rd class improvements.

Agreement that incoming tenant shall pay to outgoing tenant any allowances or compensation he may be entitled to,

and that any sum awarded by way of deduction for breaches of agreement, &c., shall be laid out by incoming tenant on the farm.

IN WITNESS, &c.

No. XX.

OF A FARM FOR A TERM.

LEASE *of a* FARM *for twenty-one* YEARS (*adapted to the alternative cases of the parties wishing to adopt with slight variations or to exclude, the Agricultural Holdings Act,* 1875, *and also adapted to a Lady-day or Michaelmas taking*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part, WITNESSETH and declares as follows:—

Lease of farm

for twenty-one years.

1. IN consideration of the rent and tenant's covenants hereinafter reserved and contained, The said A. B. (hereinafter called "the landlord") hereby demises unto the said C. D. (hereinafter called "the tenant"), THE farm and lands situate in, &c., the particulars whereof are set forth in the schedule hereunder written: To HOLD the same unto the tenant from the —— day of ——, for and during the term of twenty-one years thence next ensuing YIELDING AND paying therefor the yearly rent of £—— by equal half-yearly payments on the —— day of ——, and the —— day of ——, in every year, the first payment to be made on the —— day of —— next, and subject to the provisions hereinafter contained.

2 and 3. (*Exceptions and reservations as in Precedent No. XVIII.*)

Mutual covenants by tenant and landlord to observe conditions of lease, and by landlord for quiet enjoyment by tenant.

4. THE TENANT hereby covenants with the landlord to pay the rent hereby reserved at the times and in manner aforesaid, and also to observe all the provisions contained in these presents which are or ought to be observed and performed on his part (which provisions are hereinafter referred to as "the tenant's covenants:") AND the landlord hereby covenants with the tenant to observe and perform all the provisions contained in these presents which are or ought to be observed and performed on his part; AND ALSO that the tenant paying the rent hereby reserved, and observing and performing the tenant's covenants, shall and may quietly hold and enjoy the premises hereby

demised without any interruption from or by the landlord or any person rightfully claiming from or under him.

Covenants by tenant. To pay rent rates, and taxes.

5. THE TENANT shall pay (in addition to the rent hereby reserved) the tithe rent-charge, and all rates, taxes, and assessments whatsoever which shall, during the tenancy, be payable in respect of the demised premises, except the land tax and landlord's property tax.

Not to assign without license, and to reside in farmhouse.

6. THE TENANT shall, at all times during the said term, reside in the farmhouse, and he shall not assign or underlet the premises hereby demised, or any part thereof, without the consent in writing of the landlord [unless such consent shall be unreasonably withheld].

To repair.

To paint outside once every five years, and inside every seven years.

7. THE TENANT shall keep the farmhouse and buildings hereby demised in good and substantial repair, and so leave the same at the end of the tenancy (*t*). [In particular he shall paint, once in every five years of the said term, all the outside wood and ironwork of the said farmhouse and buildings which have been usually painted, and once in every seven years the inside of the said house and buildings with two coats in oil of the best quality.] THE TENANT shall also from time to time at the proper season well and sufficiently lay out, repair, and keep repaired all hedges, gates and fences, and open, scour, cleanse and throw all ditches, watercourses and drains, and so leave the same at the end of the tenancy.

To insure against fire.

8. THE TENANT shall at all times during the said term keep the farmhouse and farm buildings insured against loss or damage by fire, in the joint names of the landlord and tenant, in the —— insurance office, or in some other insurance office approved of by the landlord, in a sum of money sufficient to cover the value of the said house and buildings, and shall for that purpose pay all premiums and sums of money payable in respect of such insurance, and shall from time to time, when required, produce to the landlord or his agent the policy of such insurance and the receipt for every such premium and sum of money, and all monies which shall be received under or by virtue of any such insurance shall be forthwith laid out and applied in the rebuilding or reinstating of the premises, in respect of which the same

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(*t*) If the landlord is to insure, the words "damage by accidental fire tempest excepted" should be added here.

shall be paid, and if the same shall be insufficient for that purpose, the deficiency shall be paid by the tenant out of his own money (*u*).

9 to 13. (*Covenant to preserve game, to preserve trees, to prevent new footpaths, &c., not to mow more than once a year, not to break up pasture, not to take two white crops in succession, &c., and to cultivate properly, to consume hay, &c., on farm, as in Precedent No. XVIII., clauses* 9 *to* 13, *suprà*, pp. 80, 81.)

To pay 5 per cent. on money expended in draining, building, and other improvements.

14. IF THE LANDLORD shall, at any time during the said term, by agreement with the lessee, expend any money in draining, building, or other permanent improvements on the said premises, the lessee shall, during the said term, pay to the lessor interest on the sum so expended after the rate of £5 per cent. per annum, such interest to be considered as additional rent, and to be recoverable as such by distress or otherwise.

Course of cultivation to be adopted in last five years.

15. THE TENANT shall not, during any one of the last 5 years of the term hereby granted, plant more than one fifth part of the arable land with wheat, nor more than one fifth part thereof with barley or oats, or other exhausting crop, but shall have during each such year at least one fifth part of the arable land in old seeds, and at least one fifth part in turnips or green crops, and at least one fifth part in clover or sainfoin, such seeds, turnips, green crops, clover and sainfoin, to be respectively eaten off on the land.

16. THE TENANT shall, in the last year of the tenancy, prepare and sow, &c., *or* THE TENANT shall stack, &c. (*as in Precedent No. XVIII., clause No.* 14, *suprà*, pp. 81, 82, *according as the taking is a Lady-day or Michaelmas one*).

Landlord to find rough timber for tenant's repairs.

17. THE LANDLORD shall provide and allow to the tenant sufficient timber in the rough for all repairs which shall be required to be done by him under his covenants hereinbefore contained, unless such repairs shall be rendered necessary by any wilful waste or neglect of the tenant, in which case the tenant shall provide such timber at his own expense.

To insure.

[18. THE LANDLORD shall keep the farmhouse and farm buildings insured against fire, in a sum sufficient to cover the value thereof, and all moneys received under such insurance shall be

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(*u*) This covenant will be omitted if the arrangement is that the landlord shall insure.

forthwith applied in reinstating the premises in respect of which the same shall have been received, and if the said moneys shall be insufficient for that purpose, then to pay the deficiency out of his own moneys (*x*).]

19. (*If the taking is a Michaelmas one, insert covenant that landlord or incoming tenant is to take to turnips and fallows as in Precedent No. XVIII., clause No.* 16, *suprà*, p. 83.)

20. (*Allowances to be made to tenant at end of tenancy, as in Precedent No. XVIII., clause No.* 17, *suprà*, p. 83.)

Power of re-entry.

21. If any rent hereby reserved shall remain unpaid for the space of twenty-one days after the time hereby appointed for payment thereof, whether the same shall have been lawfully demanded or not, or if there shall be any breach of any of the tenant's covenants, or if the tenant shall become bankrupt or compound or make an arrangement with his creditors, then and in any of the said cases the landlord may re-enter into and upon the premises hereby demised, or any part thereof, in the name of the whole, and the same have again, repossess and enjoy as in his former estate.

22. (*Agricultural Holdings Act*, 1875, *to apply with certain variations, or if Act is to be excluded, provisions for valuation, and clause that Act shall not apply, as in Precedent No. XVIII., clauses* 19, *or* 19*a*, 19*b*, *and* 19*c*.)

Devolution of rights and obligations.

23. All rights and obligations of the landlord and tenant respectively under these presents shall, &c. (*devolution of rights and obligations, suprà, p.* 49).

In witness, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*x*) This will be omitted if the tenant insures.

No. XXI.

OF A FARM FOR A TERM.

LEASE *of a* FARM *for* TWENTY-ONE YEARS (*another form*), *leaving the tenant unrestricted as to the mode of cultivation until the last four years of the term, or until notice from landlord* (*y*).

THIS INDENTURE, &c. (*same as last Precedent down to end of clause* 7, *then covenants to preserve game, if desired, and not to fell trees, and to preserve footpaths, as in Precedent No. XVIII., clauses* 9 *to* 11, *suprà*, pp. 80, 81, *and then proceed as follows*).

During last four years tenant to adopt four-course system of husbandry.

12. DURING the last four years of the said term the tenant shall bring the arable lands into the four-course system of husbandry practised in Norfolk, so that in the last year of the term there shall be, as nearly as the sizes of the fields will admit, one-fourth in winter corn or pulse, upon olland or grass of one year's lying; one-fourth in a root crop, of which not more than one-fourth shall be mangold-wurzel, and not more than one-tenth in white turnips; one-fourth part in barley or other spring corn; and the remaining one-fourth in olland or grass of one year's lying; and he shall not suffer any hemp, mustard, cole-seed, or clover trefoil, or other artificial grass to stand or grow for a crop of seed in the last four years of the term.

(*Or*)

DURING the last four [*or* five] years of the said term the tenant shall adopt the system of husbandry next hereafter described (that is to say,) (*describe the system of husbandry to be adopted*).

Landlord may by notice require tenant to adopt four-course system.

13. THE landlord may at any time give notice in writing to the tenant requiring him at the expiration of four [*or* five] years from the date of such notice to adopt the system of husbandry described in clause 11, and in such case the tenant shall adopt the same accordingly.

(*y*) This Precedent is on the principle of the form of lease known as Lord Leicester's Lease.

OF A FARM FOR A TERM.

Further conditions to be observed during last four years, &c.

14. DURING the last four [*or* five] years of the said term, or previously thereto if the system of husbandry described in clause 11 shall have become obligatory on the tenant by notice as aforesaid, the tenant shall be bound to observe the following conditions also (that is to say),

Tenant to consume hay, &c., on farm.

(1.) He shall consume on the farm all hay, straw, chaff, greencrops, turnips, and mangold-wurzel (except that grown in the last year of the said term), and spread the manure over the lands in a husbandlike manner.

Not to mow more than once, nor two years in succession.

(2.) He shall not mow any of the meadow or pasture land more than once in the year, nor two years in succession.

To cut fences, &c.

(3.) He shall cut and scour fences and ditches as required by the lessor or his agent, open, drain and cleanse all watercourses and drains, and keep out-falls of water clear, level and spread ant and mole hills, mow thistles, rushes, and weeds before seeding time, and not suffer swine, unless well ringed, to be upon the meadow land.

(*Add any other conditions thought necessary.*)

(*Landlord's covenants, and general provisions, as in last Precedent.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XXII.

LEASE *of* COAL MINES *in* LANCASHIRE *by a* TENANT *for* LIFE *under a* SETTLEMENT.

OF COAL MINES IN LANCASHIRE.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*lessor*), of the first part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*lessees*), of the second part. WITNESSETH AND DECLARES as follows:—

Lease of mines.

1. IN consideration of the rents and lessees' covenants hereinafter reserved and contained, the said A. B. (hereinafter called

"the lessor"), in exercise of a power for this purpose given to him by an indenture, &c. (*date and parties*), and of all other powers (if any) him hereunto enabling, hereby appoints and demises unto the parties hereto of the second part (hereinafter called "the lessees"), ALL THOSE mines, beds, veins, and seams of coal and cannel from the surface down to and including the mine, bed, vein, or seam, called the —— mine, as well opened as unopened, lying and being within and under; 1st, the lands situate in the township of ——, in the county of ——, containing together —— acres or thereabout, Cheshire measure, delineated and coloured —— on the plan annexed to these presents, all which lands (as well the surface thereof as the mines thereunder) are comprised in or subject to the uses of the said indenture of settlement; and secondly, the lands situate in the said township of ——, containing —— or thereabouts, Cheshire measure, delineated and coloured —— on the said plan, which lands as to the surface thereof belong to —— Esq., but the above-mentioned mines thereunder are comprised in and subject to the uses of the said indenture of settlement: TO HOLD the same unto the lessees from the —— day of ——, for and during the term of forty years thence next ensuing, SUBJECT to the provisions hereinafter contained.

Mines under lands belonging to lessor.

And mines under lands not belonging to lessor,

for term of forty years.

RIGHTS AND PRIVILEGES TO BE EXERCISED OR ENJOYED BY LESSEES (*a*).

Grant of liberty for lessees to work mines.

2. FOR the consideration and in exercise of the power or powers hereinbefore mentioned or referred to, the lessor hereby appoints and grants that it shall be lawful for the lessees at all times during the term hereby granted to work and get the mines hereby demised, and to manufacture and carry away the produce thereof, and for that purpose and in connection therewith (but subject to the restrictions and conditions hereinafter expressed) to have and exercise in, over, upon or under the lands, under which the said mines lie, (but as regards the lands secondly hereinbefore described, so far only as it is competent for the lessor to grant the same) all necessary and proper easements, rights, and privileges, and in particular to do all or any of the following things (namely)—

(*a*) This and the other headings may be inserted or omitted as the draftsman pleases.

OF COAL MINES IN LANCASHIRE.

To sink pits, &c.

To sink, make, erect, set up, and construct pits, shafts, levels, airways, waterways, engines, machinery, furnaces, kilns, ovens, workmen's cottages, railways, tramways, and other ways, canals, cuts, wharves, erections and other works, and to use all existing works of the above description.

To deposit coal, &c.

To deposit upon a convenient part of the said lands all coal, cannel, and slack gotten from the said mines, and all earth and spoil brought to the surface therewith, and all materials used in the working thereof.

To appropriate water.

To appropriate and use for any purpose connected with the working of the said mines any water within the said lands, and make and construct reservoirs and ponds for collecting such water, but so that in the exercise of this privilege the lessees shall not deprive any house, mill, or watering place for cattle, of a reasonable quantity of water as before accustomed, and do not in any manner foul, impregnate, or otherwise deteriorate any springs or streams of water, so as to render the same useless and unprofitable.

To get clay, &c., for building.

To get and dig clay, gravel, sandstone, and slate from the said lands, and burn clay into bricks for the purposes of the works hereby authorised, but not for sale.

Restrictions as to sites for surface works.

3. No pit or shaft shall be sunk, and no building or thing erected or set up, and no other surface operation carried on by virtue of the liberties and privileges above granted in or upon the demesne lands of —— house or any part thereof, nor (without the lessor's consent) upon the site of any house or building, or any courtyard, fold, garden or orchard attached or belonging to any house or building, nor shall any land be taken or occupied for any surface operation, if the same shall be required for working any mines of the lessor not included in this lease, or for the purpose of any of the works connected with such mines, and any other land not so required shall be suitable and convenient and equally available for such surface operations.

Coke ovens to consume their own smoke.

4. No coke ovens shall be erected or set up in such a position that any damage or inconvenience may thereby arise to existing buildings, and all coke ovens shall (as far as is reasonably practicable) consume their own smoke.

Notice to be given before

5. Before taking any land for surface operations, the lessees

entering on lands, and lessor to be at liberty to object to proposed site.

shall give to the lessor or his agent one calendar month's previous notice in writing, and shall also give a similar notice to the tenants or occupiers of the land proposed to be taken, or leave such notice at their respective usual places of abode, and every such notice shall properly and correctly specify by name or other sufficient designation and by quantity the land proposed to be taken, and the purpose for which the same is required. The lessor or his agent may at any time within one calendar month from the receipt of such notice state his objections (if any) to the proposed site, and the validity of such objections shall be determined by arbitration (*b*).

Lessees may remove moveable machinery, &c., within six months after end of lease.

6. The Lessor further appoints and grants unto the lessees that they may at any time or times within six calendar months after the end of this lease carry away and dispose of any coal or other minerals which shall have been raised during the said term, and also remove all plant, machinery and utensils upon or under the said lands being in the nature of trade or tenant's fixtures, or other moveable things of the lessees, which the lessor shall not elect to purchase under the provision in that behalf hereinafter contained.

Rights reserved to Lessor.

Reservations to lessor.

7. The following rights, liberties and privileges are reserved to the lessor out of this demise (that is to say),

Liberty for lessor to work other mines and to use the works of the demised mines for that purpose.

Liberty for him, and any lessee or other person authorized by him in that behalf, to enter into and upon the above-mentioned lands or any of them, and to search for, dig, work, and get all or any of the mines and minerals and other substances under the said lands which are not included in this lease, and for the purposes aforesaid to sink, make, erect, and use such pits, shafts, levels, drains, watercourses, reservoirs, tunnels, buildings, engines, machinery, canals, railways, waggonways, and other ways, works and conveniences upon, through, or under the said lands, and the mines hereby demised, and the workings of the lessees under these presents as shall be necessary or expedient: And also for the purposes aforesaid to use any existing pits or shafts and other works in and upon the said lands not required by the lessees for the purpose of the mines hereby demised:

(*b*) See the clauses as to the selection of sites for surface operations in the next Precedent, which may be substituted (if desired) for those in the text.

And also to use in common with the lessees any canals, railways, waggonways, and other ways now existing, or which may hereafter be made by the lessees under the authority of these presents, and to cross or intersect any such last-mentioned canals, railways, waggonways, or other ways, with or by any canals, railways, waggonways, or other ways to be made under the liberties and powers hereby reserved: PROVIDED ALWAYS that the said reserved rights and privileges shall be exercised and enjoyed in such manner as not to hinder or interfere with the rights and privileges of the lessees under these presents: PROVIDED ALSO that if the lessor or any person authorized by him as aforesaid shall use any canal, railway, waggonway, or other way in common with the lessees under the said reserved liberty in that behalf, the lessor or other the person using the same as aforesaid shall pay and contribute a just and fair proportion of the expense of keeping the same in repair and working order, the amount of such proportion to be settled in case of dispute by arbitration: PROVIDED ALSO that fair and proper compensation shall be paid by the lessor or other the persons for the time being exercising the said excepted and reserved rights and privileges to the lessees for all loss, damage, or injury which they may sustain or be put into by reason or in consequence of the exercise thereof, the amount of such compensation to be settled in case of difference by arbitration.

But in so doing not to interfere with exercise of lessees' privileges, and to contribute to expense of keeping in repair canals, railways, &c., used in common, and to compensate lessee for damage done in exercise of reserved privileges.

RENTS RESERVED BY THIS LEASE.

8. THE certain yearly rent of £—— shall be paid by the lessees to the lessor for and in respect of the mines and premises hereby demised, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first half-yearly payment to be considered as having become due on the —— day of ——. For and in respect of which certain yearly rent of £——, the lessees may in every year of this demise work and get from or out of the said demised mines and premises such a quantity of coal and cannel as at the rates hereinafter mentioned would yield or pay for that year footage rents equal in amount to the said certain yearly rent of £——. But the said certain rent shall always be paid, whether such quantity shall in fact be gotten or not.

Certain yearly rent.

OF COAL MINES IN LANCASHIRE.

Footage rents.

9. THE following footage rents shall be paid by the lessees to the lessor for and in respect of all coal and cannel gotten from or out of the said demised mines and premises over and above the quantity which the lessees are hereinbefore authorized to work and get in respect of the said certain yearly rent of £—— (that is to say); The rent of £—— for every Cheshire acre of one foot in thickness (meaning by the term "Cheshire acre" an acre reckoned after the accustomed measure of 8 yards to the perch or pole), and so in proportion for a greater or less quantity than an acre, and for a greater or less thickness than one foot, of coal and cannel gotten from or out of the mines called the —— Mine and the —— Mine respectively, or either of them; the rent or sum of £—— for every Cheshire acre of one foot in thickness, and so in proportion as aforesaid, of coal and cannel gotten from or out of the mines called the —— Mine and the —— Mine respectively, or either of them; and the rent or sum of £—— for every Cheshire acre of one foot in thickness, and so in proportion as aforesaid, of coal and cannel gotten from or out of the other mines hereby demised or any of them. The said footage rents to be paid by half-yearly payments on the —— day of —— and the —— day of —— in each year for and in respect of the coal and cannel gotten during the then preceding half-year. PROVIDED ALWAYS that if in any year of the said term the lessees shall not work and get from or out of the said demised mines and premises such a quantity of coal or cannel as at the rates above mentioned would produce or yield footage rents equal in amount to the said certain rent of £——, then, and as often as the same shall happen, the lessees may, during the next ten years of the said term, or any of them, but not afterwards, work and get from or out of the said demised mines and premises such quantity of coal and cannel as shall be required to make up such deficiency without paying any rent for the same other than the said certain rent.

Provision for making up under workings during the next ten years.

Abatement to be made for coal left to support buildings, &c.

10. A DEDUCTION or abatement shall be made in making or taking the yearly calculation or admeasurement for the purpose of ascertaining the footage rents payable for the then preceding year for and on account of all coal left for the support of buildings under the covenant in that behalf hereinafter contained, or for faulty, thin, or bad coal, or for protection against water, but no such deduction or abatement shall be made for or on account

of any pillars, walls, or ranges which may be left in the said mines otherwise than for the support of buildings, or for faulty, thin, or bad coal, or for protection against water as aforesaid, but all such pillars, walls, or ranges other than as aforesaid, shall be paid for in like manner as if the coal constituting the same had been actually gotten from or out of the said demised mines.

Surface rent.

11. The further yearly rent of £—— shall be paid by the lessees to the lessor for or in respect of every Cheshire acre of land belonging to the lessor, the surface whereof shall be occupied or used by the lessees for any of the purposes of this demise, and so in proportion for any less quantity than an acre, the said surface rent to be paid by equal half-yearly payments on the same days as the said certain rent of £—— is hereinbefore made payable, and the first half-yearly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall commence, and the last half-yearly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall have ceased and the land shall have been restored and rendered fit for cultivation again, and in case any difference of opinion shall arise as to what ought to be considered the occupation or use of the surface of any land for the purpose aforesaid, or as to the day on which such occupation or use shall have commenced, or as to the amount of rent payable under the reservation aforesaid, the matter in difference shall be settled by arbitration: Provided always that no such rent shall be paid or demanded in respect of any spoil banks or roads or ways now in existence and not used by the lessees.

The Lessees' Covenants.

Covenants by lessee to pay rents.

12. The lessees hereby jointly and severally covenant with the lessor to pay the rents reserved by this lease at the times and in the manner above appointed in that behalf, and also to observe and perform the provisions hereinafter contained, which are or ought on their parts to be observed and performed.

To pay rates and taxes.

13. In addition to the rents hereby reserved the lessees shall pay and discharge all taxes, rates, assessments, and impositions whatsoever which shall from time to time be charged, assessed, or imposed upon the said demised premises or any part thereof,

or upon the owner or occupiers thereof by authority of parliament or otherwise, except the landlord's property tax.

To work without intermission, &c.

14. THE LESSEES shall, during the continuance of this demise, work and get the mines hereby demised in a skilful and workmanlike manner, according to the most approved practice of mining in the district, and as to each and every of the mines when opened without voluntary intermission, and shall keep all the pits and shafts, machinery and works belonging to and used in connection with the said mines in good repair, working order and condition.

To fence off pits, &c.

15. THE LESSEES shall and at all times during the continuance of this demise, effectually fence off and keep fenced off from the adjoining lands with good and substantial rails and posts all the pits, shafts, and banking room, roads, railways, canals, reservoirs, clay pits, and other places and conveniences made or used for working and carrying on the mines hereby demised, and maintain sufficient roads, gates, stiles, and fences for the convenient occupation of such lands, and for the passing and repassing by the lessor and his tenants, agents, and servants, and others on foot, and with horses, carts, carriages, and cattle to and from the said lands, for all purposes whatsoever.

Not to work within certain distance of fault, or near any buildings.

16. THE LESSEES shall not work the mines hereby demised within the distance of fifty yards from the —— fault except in levels and narrow workings for the purpose of ascertaining its true direction, and shall not work the mines under and adjacent to any building now standing, or which may hereafter be erected on the said lands or any part thereof, without giving to the lessor or his agent one calendar month's previous notice in writing: AND the lessor or his agent may, at any time within one calendar month after the receipt of such notice, mark out what coal shall be left as a support for such building, and the lessees shall leave such coal accordingly: AND if the lessor or his agent shall omit to mark out or to cause to be marked out what coal shall be left as aforesaid for the space of one calendar month after the receipt of such notice, the lessees shall leave so much coal as shall be sufficient to support the said building and protect the same from all damage and injury whatsoever by reason of working the said mines: AND if the lessees shall neglect or omit to leave a sufficient support for such building, and any damage or injury shall be thereby occasioned to such

building, then and in such case the lessees shall pay to the lessor, or other the person or persons entitled to or interested in such building, full and adequate compensation for the damage or injury to be done thereto as aforesaid, the amount thereof to be settled in case of dispute by arbitration (*c*).

To account half-yearly with tenant for damage done, &c.

17. THE LESSEES shall on or before the —— day of —— in every year during the continuance of this demise, and before the end of six calendar months from and after the determination thereof, account with the tenants and occupiers of any part of the lands within or under which the said mines and beds of coal and cannel shall be gotten, and also with all persons who may be injured by the working and getting of such mines, or in anywise relating thereto, and pay to them full compensation for all damage or injury done or occasioned through or by means or in consequence of the exercise of any of the liberties and privileges hereby granted, and shall indemnify and save harmless the lessor therefrom, the amount of such compensation to be settled in case of difference by arbitration.

To make plans, &c., half-yearly

18. THE LESSEES shall within one calendar month after each of the half-yearly days hereby appointed for payment of rent make an exact map and admeasurement in acres, roods, perches, and yards of the gettings of the mines hereby demised during the preceding half-year, such admeasurement to be taken as land measure of —— yards to the perch or pole, and to include all pillars, walls, and ranges which may be left as aforesaid, and to particularise the quantities and thickness of each mine separately, or as near as may be, and such map to be on a scale of thirty yards to the inch: AND every such map and admeasurement shall be open at all times to the inspection of the lessor or his agent, who may make copies thereof.

To restore lands to original state at end of lease, or pay for land which cannot be so restored.

19. THE LESSEES shall at or before the expiration of the said term cause to be restored to their original or natural level, state, and condition, and fit for agricultural occupation all such parts of the lands as shall have been appropriated and used for any of the purposes of this demise: And if any land shall be permanently

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(*c*) The rule of law that where the property in the soil and in the minerals belongs to different persons the mine owner must not work the mines so as to let down the surface, does not apply between a lessor and lessee of mines. The rights of the parties under such a lease must depend on the terms of the contract (Eaden *v.* Jeffcock, L. R. 7 Exch. 379). It is therefore proper to make express provision for protection to the soil and buildings thereon, when intended.

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damaged or interfered with, so that the same cannot be restored as aforesaid, the lessee shall pay to the lessor at the end or sooner determination of that lease the sum of £—— for every statute acre of such land, and so in proportion for any less quantity than an acre.

To deliver up mines and works in good condition at end of term.

20. THE LESSEES shall, at the expiration or sooner determination of the term, deliver up to the lessor in good repair, order, and working condition, all buildings and erections of brick, stone, or slate standing and being on the lands, and all pits, shafts, watergates, airgates, and levels belonging to the said mines, except pits, shafts, or other works which shall have been abandoned or disused in the ordinary and fair course of working of the said mines, and all such other works and things belonging to the said mines as are not in the nature of tenants' or trade fixtures removeable by the lessees, and also all such articles and things, (if any) as the lessor shall elect to purchase under the power hereinafter given to him in that behalf.

Lessor to be at liberty to descend shafts to inspect mines.

21. THE LESSOR and his agents, servants, and workmen shall be at liberty at all reasonable times during the said term to descend any pits or shafts of the lessees into the mines hereby demised for the purpose of examining the condition thereof, and of the works belonging thereto, AND the lessees with proper persons employed by them and acquainted with the workings of the said mines shall effectually assist the lessor or other the persons aforesaid in descending into the said mines, and in returning to the surface, and shall allow him or them the use of all necessary and proper machinery and plant for that purpose.

Not to assign, &c., without licence of lessor, but licence not to be unnecessarily withheld.

22. THE LESSEES shall not assign or underlet the mines and premises hereby demised, or any part thereof, to any person or persons whomsoever, without the consent in writing of the lessor for that purpose first had and obtained, unless such consent shall be unreasonably withheld, and if any question shall arise as to whether the consent is or is not unreasonably withheld the same shall be settled by arbitration (*d*).

THE LESSOR'S COVENANT.

Lessor's covenant. For quiet enjoyment by lessees.

23. THE LESSOR hereby covenants with the lessees that they paying the rents hereby reserved, and observing and performing

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(*d*) See Treloar *v.* Bigge, L. R. 9 Exch. 121.

the covenants and provisions herein contained, and on their parts to be observed and performed, shall peaceably and quietly hold and enjoy the mines and premises hereby demised for and during the term hereby granted, without any lawful interruption from or by the lessor, or any person rightfully claiming from or under him.

GENERAL PROVISIONS.

General provisions.

Power of distress.

24. IF the rents hereby reserved, or any of them, or any part thereof respectively, shall be behind or unpaid for the space of twenty-eight days next after any of the days whereon the same ought to be paid, then and so often as the case shall happen, the lessor may enter into and upon the mines and premises hereby demised, or any lands which shall for the time being be possessed or occupied by the lessees for the purposes of these presents, and may distrain all or any of the coal, cannel, horses, engines, wheels, trains, whimseys, tools, implements, baskets, machines, or other utensils, matters, and things which shall be found in or upon the same premises, and the same may take, lead, and drive, carry away, and impound, and in pound detain and keep, or otherwise may demean therein according to law, until the rent which shall be then due, and all costs and expenses occasioned by the non-payment thereof, shall be fully paid and satisfied.

Power of re-entry

25. IF the rents hereby reserved, or any of them, or any part thereof respectively, shall be behind or unpaid for the space of sixty days next after any of the days whereon the same ought to be paid as aforesaid, whether the same shall have been legally demanded or not, or if the lessees shall commit any breach of the covenants and conditions contained in this lease and on their parts to be observed and performed, or any of them, then and in any such case it shall be lawful for the lessor at any time thereafter, and although he may not have taken advantage of some previous default of a like nature, into and upon the mines and premises hereby demised, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess, and enjoy, as of his former estate.

Power of lessees to determine lease if mines be-

26. IF at any time during the continuance of this demise the mines hereby demised shall become unworkable by reason of any large outbreak of water not caused by improper working or by

come unworkable.

any default of the lessees, then and in such case the lessees may determine the lease on the —— day of —— in any year of the term hereby granted by giving to the lessor twelve calendar months' notice in writing to that effect, but without prejudice to the rights and remedies of the lessor, under or by virtue of these presents, for the recovery of any rent which may then remain unpaid, or in respect of any breach which may have been committed of any of the covenants herein contained on the part of the lessees.

Lease to determine if mines are worked out.

27. If all the mines, seams, beds, or veins of coal and cannel hereby demised and getable to profit shall be wholly exhausted before the expiration of the term hereby granted therein, then this lease shall thereupon cease and determine as if the same had expired by effluxion of time, but without prejudice to the rights and remedies of the lessor for the recovery of any rent then remaining unpaid, or in respect of any breach which may have been committed of any of the covenants herein contained on the lessees' part.

Power to lessor to purchase plant, &c., at end of term.

28. If at the end or sooner determination of this demise the lessor shall be desirous of purchasing all or any of the moveable machinery, plant, articles, and things in, upon, or under the said lands, or any part thereof, and used or employed in connection with the mines hereby demised (including all things in the nature of fixtures removeable by the lessees during the continuance of this lease), and shall signify such his desire by notice in writing to the lessees six calendar months at least before the expiration or sooner determination of the said term (unless the said term shall be determined under the power of re-entry hereinbefore contained, in which case the notice may be given at any time within six calendar months after such determination of the said term) then and in such case the articles and things specified in such notice shall be left by the lessees and be taken by the lessor at a valuation to be made thereof, in case of any difference or dispute between the parties as to their value, in the manner hereinafter provided, and the amount of such valuation, when ascertained or settled, shall be paid to the lessees within three calendar months next after such valuation shall have been agreed upon and delivered to the parties, together with interest thereon after the rate of £4 per cent. per annum from the time of such delivery thereof.

Arbitration clause.

29. If any dispute or difference shall arise between the lessor and the lessees concerning the value of the articles and things which the lessor shall elect to take or retain as aforesaid, or the amount to be paid by the lessor in respect thereof, or touching or concerning any other matter or thing which it is hereby provided shall be settled by arbitration, or touching any clause, matter, or thing whatsoever herein contained, or the operation or construction thereof, or any matter or thing in any way connected with these presents, or the rights, duties, or liabilities of either party under or in connection with these presents, then and in every such case the dispute or difference shall be referred to two arbitrators, one to be appointed by each party in difference, and in case of their disagreement then to an umpire, to be chosen by the arbitrators before entering on the consideration of the matters referred to them; and the arbitrators or their umpire shall have power to determine by whom the costs of the arbitration ought to be borne: And every such reference shall be deemed an arbitration within the Common Law Procedure Act, 1854, and be subject to the provisions relating to arbitrations contained in the said Act.

Notices, how to be given.

30. Every notice hereby required or authorized to be given to the lessor may be either given to him personally or left at his usual or last known place of abode in England or Wales, or may be given to such agent or other person or in such manner as the lessor may from time to time direct; and every notice hereby required or authorized to be given to the lessees may be given to them or either of them personally, or left at their office or counting-house for carrying on the business of their works under these presents.

Devolution of rights and obligations.

31. All rights and obligations of the lessor and lessees under these presents shall be incident to the reversion expectant on this lease and the leasehold interest hereby created respectively, and shall pass and devolve therewith on every alienation or devolution thereof.

In witness, &c.

No. XXIII.

OF COAL AND IRON MINES IN NORTHUMBERLAND.

LEASE *of* MINES *of* COAL, IRONSTONE, *and* FIRECLAY *in Northumberland* (*b*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*lessees*), of the other part, WITNESSETH AND DECLARES as follows:—

Lease of mines.

1. IN consideration of the rents and lessees' covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor") hereby demises [*or* in exercise, &c., hereby appoints and demises] unto the parties hereto of the second part (hereinafter called "the lessees"), ALL those mines, beds, veins, and seams of coal, ironstone, and fireclay, as well opened as unopened, lying, or being in or under the lands situate in the parish of ——, in the county of Northumberland, known as ——, which lands are delineated in the map or plan annexed to these presents, and are therein distinguished by a line of red colour drawn round the outer boundary thereof: TO HOLD &c. (*as in last Precedent, Art.* 1 *to the end*).

LESSEES' RIGHTS AND PRIVILEGES.

Liberty to work mines demised, and also by way of outstroke adjoining mines.

2. FOR the consideration and in exercise of the power or powers hereinbefore mentioned or referred to, the lessor appoints and grants that it shall be lawful for the lessees at all times during the said term to work the mines hereby demised, and also to work from or through the said mines by outstroke or instroke any other mines of coal, ironstone, or fireclay belonging to or held by the lessees, and also to carry over the surface of the lands under which the mines hereby demised lie, the produce of the mines hereby demised and of such other mines as aforesaid, and to exercise, enjoy, in and upon and under the said lands, all easements, rights, and privileges necessary or convenient for the

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(*b*) This Precedent might also be used for a lease of mines in any other county where the practice of mining is similar.

purposes aforesaid, and in particular to do all or any of the following things (that is to say)—

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To sink, drive, make, erect, set up, and construct in, upon, over, or under the said lands, pits, shafts, outstrokes, instrokes, drifts, levels, watercourses, aircourses, engines, machinery, houses for the residence of workmen and others employed in the said mines, sheds, furnaces, kilns, ovens, railroads, tramroads, and other roads, erections, and other works, and to use all works of the above description now existing in connection with the said mines:

To sink pits, &c.

To appropriate the water upon or within the said lands, and to collect the same in ponds and reservoirs, or otherwise, but so that the lessees shall not in exercising this privilege foul, impregnate, or otherwise deteriorate the springs or streams of water on the said lands, so as to render them useless or unprofitable:

To appropriate water.

To use and appropriate a sufficient part of the said lands for depositing and heaping thereon the coal, ironstone, and fireclay to be raised and gotten from the said mines hereby demised, and such other adjoining mines as aforesaid, and all the earth, soil, and other substances brought to the surface in or about the working of the same:

To use land for depositing minerals and spoil.

To convert coal into coke and patent fuel, to calcine ironstone, and manufacture fireclay into bricks and other articles whether for colliery purposes, or for sale, or otherwise:

To make coke, calcine ironstone, and make bricks.

To dig, work, and get common clay and stone from the said lands, and to manufacture the common clay into bricks and tiles for the purposes of the colliery erections and works hereby authorised, but not for sale or any other purpose.

To dig common clay, &c., for colliery purposes.

3. Provided always that so much of every bed, vein, and seam of coal, ironstone, and fireclay hereby demised shall remain unworked as will leave within the limits of this demise a barrier of —— yards in breadth or thickness separating the said mines hereby demised from the adjoining mines, and all outstroke and instroke drifts made through the said barrier for the purpose of working adjoining mines as aforesaid shall be of such size and

Barrier to be left.

Drifts how to be made

OF COAL AND IRON MINES IN NORTHUMBERLAND.

in such situations as shall have been previously approved of by the lessor or his agent, and all such drifts shall be so made as to be capable of being easily and effectually closed by framedams when the use thereof has ceased.

Surface operations, where to be carried on.

4. PROVIDED ALSO that all surface operations shall be carried on upon such part only of the said lands as shall be selected for that purpose in manner following (that is to say): WHENEVER the lessees shall require to occupy or use any land for surface operations, they shall give a notice in writing to the lessor or his agent specifying the site proposed for such surface operations. If the lessor or his agent objects to the site so proposed, he shall, within fourteen days after receiving such notice, himself select a site, and notify the same in writing to the lessees, and the lessees shall be at liberty at any time within fourteen days after the selection of such site shall have been made and notified to them as aforesaid, but not afterwards, to object to the same as being unsuitable or inconvenient for the purpose for which the same is required, and to notify such objection in writing to the lessor or his agent: AND in case of such objection being made and notified as aforesaid, the question whether the site is suitable and convenient or not shall be referred to arbitration under the provision in that behalf hereinafter contained.

Plan and sanitary arrangements of cottages to be approved by lessor.

5. PROVIDED ALSO that no houses for residence shall be erected by the lessees under the liberty and power above granted for that purpose until the plan, accommodation, and sanitary arrangements of such houses shall have been submitted to the lessor and approved of by him; and in case a difference of opinion on any of such points shall arise between the lessor and the lessees the same shall be referred to arbitration under the provision in that behalf hereinafter contained. AND no houses shall be used except for the purpose of residence of agents, miners, and workmen employed in or about the said mines and works, and in particular no trade of any sort shall be carried on in any such houses or any of them.

6. (*Lessees to be at liberty to remove machinery, &c. at end of term, suprà*, p. 96.)

Reservations to lessor.

RIGHTS RESERVED TO LESSOR.

Liberty for lessor to use

7. THE LESSOR shall be at liberty by himself, his tenants, agents, and servants to use any railroads or other roads made and used

by the lessees over the said lands under the authority of these presents without paying any rent for the same, and also to make, construct, and use, and to grant and demise to other persons the right to make, construct, and use over the said lands any railroads or other roads crossing or intersecting the railroads or other roads of the lessees: PROVIDED ALWAYS, that in the exercise of the rights, liberties, and privileges hereby reserved to the lessor, as little hindrance, obstruction, and damage as possible be done to the lessees, or to the exercise by them of the rights and privileges hereby granted to them: AND fair and proper compensation shall be paid by the lessor, or other the person or persons exercising the said reserved rights and privileges to the lessees for all loss, damage, or injury which they may sustain or incur by reason or in consequence of the exercise thereof, the amount of such compensation to be settled in case of difference by arbitration.

railroads, &c., of lessees, doing as little injury as possible to lessees,

and compensating them for all loss, &c.

RENTS RESERVED BY THIS LEASE.

Rents.

8. THE LESSEES shall pay to the lessor for the mines hereby demised the certain yearly rent next hereinafter mentioned (that is to say), the yearly rent of £—— for the first and second years of the term hereby granted, the yearly rent of £—— for the third and fourth years of the said term, and the yearly rent of £—— for the remainder of the said term: THE certain yearly rent payable for the time being as aforesaid to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year: FOR and in respect of which certain yearly rent the lessees may work and get in every year from and out of the said mines and premises such a quantity of coal as at the rates hereinafter mentioned would produce for that year a rent equal in amount to the said certain rent: BUT the said certain rent shall always be paid, whether such quantity shall in fact be gotten or not.

Certain rent.

9. THE LESSEES shall pay to the lessor the rent of —— for every ton of screened coals, and —— for every ton of small coals (and so in proportion for any less quantity) which shall be raised or gotten from or out of the said mines and premises in any year of the said term over and above the quantity which the lessees are hereinbefore authorised to work and get in respect of

Rent for screened coal and small coal.

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the said certain rent. PROVIDED ALWAYS that if in any year the lessees shall not raise and get from or out of the said mines such a quantity of coal as at the above-mentioned rates would produce for that year the amount of the certain rent hereby reserved, then and in every such case the lessees may in any subsequent year or years [*or* during the next —— years of the said term but not afterwards] raise and get from or out of the said mines and premises such a quantity of coal as shall be required to make up the deficiency without paying any rent for the same other than the said certain rent: But the overworkings of any preceding year or years shall not come in aid of or be applied to make good the deficiency or short workings in any subsequent year or years.

Power to lessees to make up short workings.

Rent for ironstone and fireclay.

10. THE LESSEES shall pay to the lessor the rent of —— for every ton of ironstone, and the rent of —— for every ton of fireclay which shall be raised from the said mines and premises.

Outstroke rent.

11. THE LESSEES shall pay to the lessor an outstroke rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised, which shall be brought to the surface through or by means of the mines hereby demised, and the pits or shafts thereof under the authority of these presents (*d*).

Wayleave rent.

12. THE LESSEES shall pay to the lessor a wayleave rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised, which shall be led or carried over the surface of the said lands or any part thereof under the authority of these presents, not being coal, ironstone, or fireclay, subject to the payment of outstroke rent under the last preceding article (*d*).

(*d*) The following clause reserving a greater variety of rents is taken from a Northumberland mining lease, and may be used when applicable instead of the reservation of outstroke and wayleave rent in the text :—

Watercourse or aircourse rent.

11. The lessees shall also pay to the lessor the following rents, namely—(1) a watercourse or aircourse rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mine other than the mines hereby demised which shall be drained, ventilated, or made workable by means or with the aid of any outstroke from the mines hereby demised, whether the same

OF COAL AND IRON MINES IN NORTHUMBERLAND.

How rents to be calculated.

13. THE rents above reserved (other than the said certain rent) shall be paid respectively on the —— day of ——, and —— day of —— in every year, for and in respect of the coal, ironstone, and fireclay, raised or gotten (*e*) during the then preceding half-year, and in respect of which the same shall be payable: The said rents shall be calculated upon the weights or quantities of coal, ironstone, and fireclay respectively, as the same shall be first worked and gotten, and prior to screening, washing, or cleansing. A ton shall be reckoned at 2240 lbs.

Lessees may retain a limited quantity of coal for domestic and other purposes rent free.

14. THE LESSEES may in each year have and retain for the usual and customary purposes of the colliery, and for domestic consumption in the houses or offices of the lessees or their agents and workmen for the time being employed in or about the said mines and premises, but not for sale or for any other purpose any quantity not exceeding —— part of the whole weights and quantities of coal which shall be gotten and raised during such year from the mines hereby demised, without paying any rent

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Outstroke rent.

coal, ironstone, or fireclay shall be carried through such outstroke into the mines hereby demised or not. (2) An outstroke rent of —— for every ton of coal, ironstone, or fireclay the produce of any mines not hereby demised which shall be brought or carried through any such outstroke as aforesaid into the said mines hereby demised, whether or not such coal, ironstone, or fireclay shall be brought to the surface through or by means of any pit or shaft made or used by the lessees under the authority of these presents. (3) A shaft rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised which shall be brought to the surface through or by means of any pit or shaft made or used by the lessees under the authority of these presents. And (4) a wayleave rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised which shall be led or carried over the surface of the said lands or any part thereof, or having been brought into the mines hereby demised, shall be otherwise led or carried away by the lessees under the authority of these presents.

Shaft rent.

Wayleave rent.

(*e*) If the clause in the last note is used, add here "or drained, ventilated, or made workable."

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Fireclay used in building for colliery purposes to be rent free.

for the same: And all fireclay raised from the said mines, and used by the lessees in or about the erection, alteration, or maintenance of buildings for colliery purposes, or any other works authorised by these presents, shall be free from rent.

Surface rent.

15. THE LESSEES shall also pay to the lessor for and in respect of every acre of land, the surface whereof shall be occupied or used by the lessees under the authority of these presents a yearly rent, double in amount of the value per acre of the same lands for agricultural purposes at the time when such occupation or use shall commence, and so in proportion for any less quantity than an acre, the said surface rent to be paid half-yearly on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on such of the said half-yearly days as shall happen next after such occupation or use shall have commenced, and the last of such payments to be made on the half-yearly day of payment which shall happen next after such occupation or use shall have ceased, and the land shall have been restored and rendered fit for cultivation again, or shall have been paid for at the fee simple value as provided in the lessees' covenant in that behalf hereinafter contained: AND if any difference of opinion shall arise as to what ought to be considered the occupation or use of the surface of any land for the purposes aforesaid, or as to the day on which such occupation or use shall have commenced, or as to whether such land shall have been restored and rendered fit for cultivation, or as to the amount of rent payable under this reservation, the matter in difference shall be settled by arbitration.

THE LESSEES' COVENANTS.

Lessees' covenants.

16. THE LESSEES jointly and severally covenant with the lessor, &c., (*to pay rents and observe provisions after contained, suprà, p.* 99).

17. (*Covenant to pay rates and taxes, suprà,* p. 99.)

To keep books of account, &c.

18. THE LESSEES shall at all times, during the said term, keep or cause to be kept at the office or counting-house of the colliery, to be situate in or contiguous to some part of the said lands, correct and intelligible books of account upon such plan or principle as is generally adopted in such cases, which books shall contain accurate entries of the quantity of coals and other

minerals wrought and brought to bank from the mines and premises hereby demised, and from any adjoining or other mines worked through the mines hereby demised as aforesaid (*ee*) with all particulars of dates and other facts necessary or proper for conveniently ascertaining the amounts of the several rents from time to time payable under these presents: AND ALSO shall at their own expense furnish to the lessor or his agent true and correct copies of such accounts, and of all bills of presentment whenever thereunto required, and shall, if required, verify such copies by the statutory declaration of themselves or their agent.

To keep plans of working.

19. THE LESSEES shall at all times, during the said term, cause to be made and kept at the said office or counting-house, correct and intelligible plans and sections of all the said mines hereby demised, and of any mines worked through the mines hereby demised, which plans and sections shall show as well the operations and workings which have been carried on as also all dykes, troubles, veins, faults, and other disturbances which have been observed and encountered in such workings and operations: AND all such plans and sections shall be made, amended, and filled up by and from actual surveys to be made for that purpose at the end of every period of three months, and the lessees shall at their own cost and charges furnish to the lessor or his agent true and correct copies of such plans and sections when thereunto required.

Lessor to have access to books of account and plans.

20. IT shall be lawful for the lessor and his agents and servants at all reasonable times during the said term to enter into and have free access to the said office or counting-house, for the purpose of examining and inspecting the said several books of account, plans and sections, and also all railway accounts and vouchers for carriage, and to take copies thereof and make extracts therefrom respectively.

Lessees to keep weighing machine at the mouth of each pit.

21. THE LESSEES shall provide, and at all times during the said term keep at or near the pit or each of the pits at which the produce of the mines and premises hereby demised shall be brought to bank, a good and properly constructed weighing machine, and shall weigh or cause to be weighed therein all coal

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(*ee*) If the clause in note (*d*) is used, add here "or drained, ventilated or made workable as aforesaid."

and other minerals brought to bank from or out of the mines hereby demised, or from or out of any adjoining or other mines worked through the mines hereby demised under the authority of these presents, and shall cause the weights ascertained as aforesaid to be forthwith duly registered at the machine-house or houses, and shall also at the end of each day cause the total weights and quantities of coal and other minerals, gotten during the day and weighed as aforesaid, to be entered in the aforesaid book or books of account: AND it shall be lawful for the lessor at all times during the said term to employ any person or persons to be present at the raising and weighing of the coal and other minerals, and to keep accounts thereof, and to check the accounts kept by the lessees.

Lessor may appoint person to be present at weighing.

The lessor may test weighing machines.

22. THE LESSOR and his agents and servants may, at any time or times during the said term, examine and test each and every weighing machine to be provided and kept by the lessees as aforesaid, and the weights used therewith in order to ascertain whether the same respectively are correct and in good repair and order: AND if upon any such examination or testing any such weighing machine or weights shall be found incorrect or out of repair or order, it shall be lawful for the lessor or his agent to require that the same be adjusted, repaired, and put in order by and at the expense of the lessees, and to hinder the use thereof in the meantime: AND if such requisition be not complied with within fourteen days after the same shall have been made, the lessor or his agent may cause the said weighing machine and weights respectively to be adjusted, repaired, and put in order, and may recover the expense of so doing from the lessees: AND if upon any such examination or testing as aforesaid any error shall be discovered in any weighing machine or weights to the prejudice of the lessor, such error shall be considered to have existed for three calendar months previous to the discovery thereof, or from the last occasion of so examining and testing the same weighing machine or weights in case such occasion shall be within such period of three months: AND the several rents hereinbefore reserved shall be paid or accounted for accordingly.

To work mines properly.

23. THE LESSEES shall at all times during the said term win and work the said mines and premises hereby demised in a proper, fair, and regular manner, and according to the most

approved practice of winning and working mines of the like nature respectively in the counties of Durham and Northumberland, and in accordance with the Mines Regulation Acts, and with as little damage as possible to the surface and to the buildings, fences, crops, and other property thereon.

OF COAL AND IRON MINES IN NORTHUMBERLAND.

24. THE LESSEES shall within one calendar month after the end of every year of the said term pay to the lessor full and reasonable compensation for all injury or damage done to the surface or the buildings, fences, crops, or other property thereon during the preceding year in or about the carrying on of the works hereby authorised, the amount of such compensation to be settled in case of dispute by arbitration.

To pay compensation for damage to surface.

25. THE LESSEES shall not work or carry away any part of the barrier hereinbefore directed to be left as aforesaid, except for the purpose of making drifts by way of outstroke or instroke as hereinbefore authorised: AND they shall, upon the expiration or sooner determination of the said term, or when and so soon as any such drift shall cease to be used, which shall first happen, provide sufficient frame-dams for stopping and securing the said drifts and passages, and shall by and with such frame-dams stop and secure the same accordingly, unless the lessor or his agent shall by notice in writing request them not to stop the same, in which case the lessees shall not stop the same accordingly.

To leave barrier and stop and secure drift when no longer required.

26. THE LESSEES shall well and effectually fence off from the adjoining lands all the pits, shafts, and other works made or used under the authority of these presents, and shall provide and maintain in good repair and condition proper roads, gates, stiles, and fences for the convenient occupation of the said lands: They shall also provide and maintain proper and sufficient drains, culverts, arches, and passages for carrying off any water which shall arise or be produced or interrupted by any of the works hereby authorised, so that the drainage of the said lands be not prevented or prejudiced.

To fence off pits, &c.

and provide proper roads, gates, drains, &c.

27. ALL furnaces, coke ovens, or brickworks to be erected on any part of the said lands under the authority of these presents shall be respectively constructed on the most approved principle in use at the time or respective times when the same shall be erected, and the lessees shall use their best endeavours to effect to the greatest possible extent the consumption on the premises by

Furnaces and coke ovens to be constructed on most approved principles.

To consume smoke.

the most approved method for the time being adopted or known of all smoke or vapour made or arising from the furnaces, coke ovens, brickworks, engines, or other works of the lessees so that as little smoke or vapour as may be shall issue from the chimneys or other outlets used by the lessees for the conveyance or passage of smoke or vapour.

To purify water discharged from works.

28. THE LESSEES shall in the discharge from their works of water which shall have been used for washing coal, or which has run through or passed near to burning refuse or cinder ovens, or other works, use the most approved methods by deposit or catch pits, or otherwise, to render such water as little noxious as possible before allowing the same to mix with any of the natural rivulets or brooks running through the said lands, and in case any difference of opinion shall arise as to the size, the number, or the mode of application of such deposit or catch pits, or other means or otherwise relating thereto, the matter in difference shall be settled by arbitration.

To provide wells and watering places for occupiers of surface.

29. THE LESSEES shall from time to time and at all times during the said term make and maintain in good order and repair sufficient wells or watering places in all cases where by reason or in consequence of the exercise of the rights and liberties hereby granted, or any of them, the occupier of any of the said lands, or any adjoining or neighbouring lands, shall be deprived of his wells or watering places, and shall make and maintain in good order and repair all necessary watercourses and drains for carrying water to the wells and watering places to be made and maintained as aforesaid.

Lessor to be at liberty to remove manure and ashes.

30. IT shall be lawful for the lessor or his tenants, as he shall direct, to have and take for his or their own use, free of expense, the whole of the manure and ashes made and produced on or about the pits, shafts, roads, or ways of the lessees or otherwise in working and carrying on the mines and premises hereby demised during the said term, and the lessor and his tenants shall be allowed all proper facilities for removing and taking away such manure and ashes.

Not to use railways, &c., for purposes not expressly authorised.

31. THE LESSEES shall not use or permit to be used any of the railways, waggonways, or other roads or ways, or any pits, shafts, outstroke or instroke, drifts, watercourses, aircourses, buildings, erections, machinery, or other works or conveniences which shall be made or used by them under the authority of

these presents in, over or upon, or under the said lands for any purpose whatsoever other than the working of the mines hereby demised, and such other mines as aforesaid, and such other purposes as are herein specially mentioned.

32. THE LESSOR, &c. (*lessor to be at liberty to descend shafts, and to inspect mines, as in last Precedent, Article* 21, *suprà*, p. 102).

To deliver up mines, &c., in good working order at end of term.

33. THE LESSEES shall at the end or sooner determination of the said term deliver up to the lessor in good order, repair, and condition, and fit for the future working of the said mines and premises hereby demised, all engines, houses, and buildings of stone or brick, pits, shafts, watercourses, air-gates, and levels in the said mines and premises, except any pits, shafts, or other works which shall have been abandoned or disused in the ordinary and fair course of working of the said mines and premises: AND ALSO all and singular the moveable machinery, works, articles, and things which shall be in, upon, or under the said lands, and which the lessor shall elect to purchase under the power in that behalf hereinafter given to him: AND ALSO shall at the end of the said term bank up all coals at the pit, not exceeding three months' vend, in such manner as to be no hindrance to an incoming tenant.

At end of term to restore lands or pay fee simple value.

34. THE LESSEES shall at or before the expiration or sooner determination of the said term cause to be restored to their original or natural condition all such parts of the said land as shall have been appropriated or used for any of the purposes of this demise, or shall (at the option of the lessor) pay to the lessor the value of the fee simple of the same, such value to be estimated at thirty years' purchase of the rack rent or value per acre of the same land for agricultural purposes at the time when the occupation or use thereof for the purposes of this demise shall have commenced.

35. (*Covenant not to assign or underlet without licence, as in last Precedent, Article* 22, *suprà*, p. 102.)

THE LESSOR'S COVENANT.

Lessor's covenant for quiet enjoyment

36. THE LESSOR hereby covenants with the lessees that they, &c. (*covenant for quiet enjoyment by lessees, as in last Precedent, Article* 23, *suprà*, p. 102).

OF COAL AND IRON MINES IN NORTHUMBERLAND.

General Provisions.

General provisions.

37, 38. (*Powers of distress and re-entry, suprà,* p. 103.)

Lessees may abandon mines on giving twelve months' notice.

39. If the lessees shall be desirous at the end of any year of the said term hereby granted to abandon and yield up the mines and premises hereby demised, and of such their desire shall give notice in writing to the lessor twelve calendar months at least before the period of such proposed abandonment, then this lease shall at such last-mentioned period cease and determine, but without prejudice to the rights and remedies of the lessor for any rent in arrear or for any previous breach of the lessees' covenants herein contained.

Lessor may purchase machinery, &c., at end of term.

40. If at the end or sooner determination of this lease the lessor shall be desirous of purchasing all or any of the moveable machinery, articles, and things in, upon, or under the above-mentioned lands or any part thereof, and used or employed in or about carrying on and working the mines hereby demised, or for the more convenient occupancy thereof, and shall signify such his desire, &c. (*power to lessor to purchase machinery, suprà,* p. 104).

41, 42, 43. (*Arbitration clause, clause as to notices, and devolution of rights and obligations, suprà,* p. 105.)

In witness, &c.

No. XXIV.

BY TRUSTEES UNDER POWER.

Lease *of* Mines *by* Trustees *of a* Settlement *under a* Power, *the legal estate being vested in an* Infant Tenant *in* Tail.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between A. B., of, &c., and C. D., of, &c. (*trustees*), of the first part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*lessees*), of the second part.

Recital of settlement.

Whereas under an indenture of settlement, dated, &c., and made, &c. (*date and parties*), X. Y., an infant, BY TRUSTEES UNDER POWER.

is tenant in tail in possession of the hereditaments thereby settled, and the said L. M. and N. O. are the trustees of the said indenture, and as such trustees are entitled to manage and receive the rents and profits of the said hereditaments during the minority of the said X. Y., and have also power to grant mining leases upon and subject to the conditions mentioned in the said indenture: AND WHEREAS the mines and hereditaments intended to be hereby appointed and demised are part of the hereditaments settled by the said indenture:

That mines intended to be leased are part of the settled property.

NOW THIS INDENTURE WITNESSETH AND DECLARES as follows:—

1. IN consideration of the rents and lessees' covenants hereinafter reserved and contained, the said A. B. and C. D. in exercise of the power for this purpose given to them by the said indenture of settlement, and of all other powers (if any) them hereunto enabling, hereby appoint and demise unto the parties hereto of the second part, ALL, &c. (*description of mines*) TO HOLD the same unto the said parties hereto of the second part, from the —— day of —— 18—, for the term of —— years thence next ensuing; subject to the provisions hereinafter contained; IN which provisions the term "the lessor" shall be construed to mean the person or persons for the time being entitled to the reversion expectant on this lease, and the term "the lessees" shall be construed to mean the said parties hereto of the second part, and to include also (where the context allows) all persons deriving title under them.

Trustees in exercise of power appoint and demise mines.

(*Remaining clauses as in Precedent No. XXII. or No. XXIII. omitting the covenant by the lessor for quiet enjoyment by the lessees, and substituting the following covenant*):—

THE TRUSTEES' COVENANT.

THE said A. B. and C. D. as to their own respective acts and deeds, but not further or otherwise, do hereby respectively covenant with the lessees, that they the said A. B. and C. D. respectively have not done or knowingly suffered or been party or privy to any act, deed, or thing whereby they are prevented from appointing and demising the said mines and premises, and conferring the rights and privileges hereby expressed to be appointed, demised, and conferred respectively in manner aforesaid.

Covenant by trustees that they have done no act to prevent their granting lease.

AND it is declared that the foregoing covenant is in satisfac-

BY TRUSTEES UNDER POWER.

tion of any covenant or warranty for quiet enjoyment by the lessees which would otherwise be implied by law as incident to the demise hereby made.

(*And among the general provisions the following should be inserted*) :—

Lessor's rights may be exercised by trustees while entitled to receive the rents of the settled estates.

ALL rights by these presents reserved to and conferred on the lessor may be exercised by the said A. B. and C. D. or the survivor of them, or other the trustees or trustee for the time being of the hereinbefore recited indenture of settlement, so long as they or he shall be entitled to manage and receive the rents and profits of the settled hereditaments under the provision in that behalf contained in the said indenture.

(*The clause as to devolution of rights and obligations will be omitted.*)

IN WITNESS, &c.

No. XXV.

OF MINES UNDER SETTLED LAND ACT.

LEASE *of* MINES *by* TENANT *for* LIFE *under* SETTLED LAND ACT, 1882.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*tenant for life and lessor*), of the first part, C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*trustees of settlement*), of the second part, and The —— Company, Limited (*lessees*), of the third part: WHEREAS, by an indenture of settlement, dated, &c., and made, &c. (*state date and parties*), divers lands and hereditaments therein described, of which the mines intended to be hereby leased form part, were settled to uses, under which the said A. B. is now tenant for life in possession without impeachment of waste: AND the said C. D., E. F., and G. H. are the trustees of the said settlement for the purposes of the Settled Land Act, 1882, NOW THIS INDENTURE WITNESSETH AND DECLARES as follows:

Recital of settlement.

Witnessing part.

Tenant for life appoints and demises to lessees.

1. IN consideration of the rents and lessees' covenants hereinafter reserved and contained, the said A. B. (hereinafter called the "lessor"), in exercise of the power for this purpose given

to him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, doth hereby appoint and demise unto the said company (hereinafter called "the lessees"). All, &c.

(*The remainder of the Precedent will be similar to No. XXII. or No. XXIII., except that in Clause* 8, *and the subsequent clauses relating to rents, the words "to the lessor" will be omitted throughout, and a separate clause will be added as follows*) :—

Three-fourths of rents to be paid to lessor, and one-fourth to be paid to trustees as capital money.

THREE-FOURTH parts of the several rents hereinbefore reserved shall be paid by the lessees to the lessor, and the remaining one-fourth part thereof shall be paid by them to the said C. D., E. F., and G. H., or other the persons who shall for the time being be the trustees of the said settlement for the purposes of the Settled Land Act, 1882, to be set aside by such trustees as capital money arising under that Act (*a*).

(*And the lessees' covenants will begin thus*) :

LESSEES' COVENANTS.

THE LESSEES hereby covenant with the lessor, and with the said C. D., E. F., and G. H., and other the trustees for the time being of the said settlement for the purposes of the Settled Land Act, 1882, that they, the lessees, will pay the rents hereinbefore reserved to the lessor and the said trustees in the proportions and at the times hereinbefore appointed in that behalf: AND the lessees hereby also covenant with the lessor to observe and perform all the provisions hereinafter contained, which are or ought on their part to be observed and performed.

(*Remaining covenants and provisions as in Precedent No. XXII. or XXIII.*)

IN WITNESS, &c.

(*a*) It is apprehended that the lessees ought to pay to the trustees that portion of the rent which is required by sect. 11 of the Settled Land Act to be capitalized, and that they could not safely pay it to the tenant for life, leaving the latter to hand it over to the trustees or pay it into Court, see sect. 22.

No. XXVI.

OF A BRICKFIELD.

LEASE *of a* BRICKFIELD.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part, WITNESSETH AND DECLARES as follows:

Demise of brickfield

with right to dig clay,

&c., and to manufacture brick.

1. IN consideration of the rents and lessee's covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor"), hereby demises unto the said C. D. (hereinafter called "the lessee"), ALL that piece or parcel of land, &c. (*describe field*) TOGETHER with the liberty and right to dig and get out of the said land, clay, brick-earth, sand, and other materials used in the manufacture of bricks, and to manufacture the same into bricks, draining tiles, or other ware in and upon the said land, AND ALSO liberty and right for the purposes aforesaid to make and place in, over, and upon the said land, sheds, buildings, roads, drains, watercourses, and other works and conveniences, But so that no clay, earth, or other materials shall be dug and no works carried on within six yards of the boundary fences on the south and west sides of the said land: To HOLD the same unto the lessee from the —— day of —— 18—, for the term of —— years thence next ensuing, and subject to the provisions hereinafter contained.

Certain rent.

2. THE LESSEE shall during the said term pay to the lessor for or in respect of the premises hereby demised the certain yearly rent of £——, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment to be made on the —— day of —— next, For and in respect of which rent the lessee may in each year manufacture on the said lands so many bricks, tiles, or other articles of ware as according to the rates hereinafter mentioned would produce for that year royalties amounting to £——.

Royalty for bricks, &c.

3. THE LESSEE shall on the —— day of —— in every year pay to the lessor for or in respect of all bricks, draining tiles, and other ware manufactured during the preceding year on the said land over and above the number or quantity which the

lessee is hereinbefore authorised to manufacture in respect of the said certain rent, the following rents or royalties, that is to say, a rent or royalty of two shillings sterling for each and every quantity of one thousand bricks or draining tiles, and a rent or royalty equivalent in amount to the sum of one shilling and four pence for every twenty shillings in value thereof at the kiln of any article or ware other than bricks or draining tiles manufactured as aforesaid: PROVIDED ALWAYS that if in any one year the lessee shall manufacture on the said land less than the number of bricks, tiles, or other articles which he is hereinbefore authorised to manufacture in respect of the said certain rent, then and in every such case he may in any subsequent year or years of the said term manufacture so many bricks, tiles, or other articles as will make up the deficiency without paying any royalty or rent for the same beyond the certain rent, BUT the certain rent shall be always paid whatever may be the number of bricks manufactured.

OF A BRICKFIELD.

Average clause.

4. THE LESSEE hereby covenants with the lessor to pay the said rents at the times and in manner aforesaid, and also to observe and perform all the provisions hereinafter contained, which are or ought on his part to be observed and performed.

Covenants by lessee to pay rent, rates, and taxes.

5. (*Covenant to pay rates and taxes*, *suprà*, p. 99).

6. THE LESSEE shall not use the land hereby demised for any other purpose than as a brickfield, and he shall manufacture all the clay and other materials gotten therefrom into bricks, tiles, or other ware on the said land and not elsewhere. All the bricks and draining tiles shall be of the common and ordinary size.

Not to use land for any other purpose than a brickfield.

7. FOR the purpose of ascertaining the amount of rent payable for the time being as aforesaid, the lessee shall keep proper and correct books of account showing the number of bricks, tiles, and other articles manufactured on the said land, and shall from time to time deliver to the lessor or his agent a correct abstract of the said books of account for the then preceding year, and shall verify the same by the statutory declaration of himself or his foreman if required, and shall permit the lessor and his agent at all reasonable times to inspect the said books of account, and to take extracts therefrom.

To keep proper accounts.

8. THE LESSEE shall at all times during the said term keep all sheds, buildings, kilns, and other erections now standing or

To keep buildings, &c., in repair.

To carry on works properly.

which shall hereafter be erected or set up in or upon the said land under the authority of these presents, in good and substantial repair and condition, and the same in such good and substantial repair deliver up to the lessor at the end of the said term. And he shall at all times carry on the works hereby authorised in a proper and workmanlike manner, and keep indemnified the lessor from and against all actions, claims, and demands for or by reason of any injury to adjoining property or any nuisance or annoyance arising from the carrying on of the said works.

Lessor may enter and inspect works.

9. It shall be lawful for the lessor or his agent at all reasonable times during the said term to enter into and upon the land hereby demised for the purpose of inspecting the works therein.

Lessee to preserve trees, and to permit lessor to plant near hedgerows.

10. The lessee shall not cut down, destroy, or injure any trees standing on the said land, and shall permit the lessor to plant trees on the said land within six yards of the hedgerows on the south and west sides thereof.

To restore land to original condition.

11. Whenever any land shall cease to be used for the purposes of this demise, the lessee shall restore the surface thereof to its original state and condition as far as is practicable, unless the lessor shall require him to leave the same in its actual state.

Not to remove any plant in last year.

12. The lessee shall not during the last year of the said term remove or destroy any machinery or plant standing and being on the said land, and used for the purposes of the works hereby authorised without the consent of the lessor, but shall keep the same on the said land or in or about the said works in order to enable the lessor to exercise the option of purchasing the same hereinafter conferred on him.

Power for lessor to purchase plant.

13. If at the expiration or other sooner determination of the term hereby granted, the lessor shall be desirous of purchasing all or any of the machinery and plant in and upon the said land which shall have been provided by the lessee for the purposes of the works hereby authorised, and shall signify his desire in that behalf by a notice in writing to be given to the lessee at his office on the said works, within one calendar month after the determination of the said term, then and in such case the said machinery and plant or such part thereof as the lessor shall elect to purchase as aforesaid shall be left by the lessee, and taken by the lessor at a price to be determined by arbitration in case of difference.

14. THE LESSEE shall not assign or underlet the land hereby demised or any part thereof, without the consent in writing of the lessor.

Not to assign without licence.

15. THE LESSOR hereby covenants with the lessee that the lessee paying the rents hereby reserved and observing and performing the covenants and conditions herein contained, and on his part to be observed and performed, shall peaceably and quietly hold and enjoy the premises hereby demised for and during the term hereby granted without any lawful interruption from or by the lessor or any person rightfully claiming from or under him.

Lessor covenants for quiet enjoyment by lessee.

16. THE LESSOR hereby also covenants with the lessee that the lessee may at any time within six calendar months after the expiration or sooner determination of the said term remove and carry away and convert to his own use all the machinery and plant which shall have been provided by him for the purposes of the works hereby authorised, and which the lessor shall not have purchased under the power in that behalf hereinafter given to him.

Lessee may remove plant not purchased by lessor within six months from end of term.

17 *to* 20. (*Powers of distress and re-entry and Arbitration clause, as in Precedent No. XXII., Arts.* 24, 25, *&* 29, *substituting* "*lessee*" *for* "*lessees,*" *suprà*, pp. 102, 104.)

21. ALL rights and obligations of the lessor and lessee under these presents shall be incident to the reversion expectant on this lease and the leasehold interest hereby created respectively, and shall pass and devolve therewith on every alienation or devolution thereof.

Devolution of rights and obligations.

IN WITNESS, &c.

No. XXVII.

OF STONE QUARRIES.

LEASE *of* Stone Quarries *and* Chalk *and* Sand Pits —Covenant *by* Lessee *to make a* Road, *and other* Covenants.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part, WITNESSETH and declares as follows:—

Demise of quarries, &c.

1. In consideration of the rents and lessee's covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor") hereby demises unto the said C. D. (hereinafter called "the lessee"): all those stone quarries and chalk pits in and under certain parcels of land called —— and ——, situate in the parish of ——, in the county of ——: And also all that sand pit situate and being at the north-west corner of a certain parcel of land called ——, and situate in —— as aforesaid, and which said quarries, chalk pits, and sand pit are now in the occupation of the lessee, and the said lands and certain other lands of the lessor adjoining thereto are delineated in the plan drawn in the margin of these presents, and are therein coloured pink: To hold the same unto the lessee from the —— day of ——, for the term of —— years thence next ensuing.

Liberty to work and get chalk, &c.

2. The lessee shall and may at all times during the said term work and get from or out of the lands coloured pink on the said plan by means of the aforesaid quarries and pits, so much chalk, fire-stone, hearth-stone, burr-stone, and sand as he shall think fit: Provided always that the precise places from or out of which the said chalk, stone, and sand shall be gotten, shall from time to time be set out and appointed for that purpose by the lessor or his agent, with liberty, however, for the lessee to object to any place so set out and appointed as not being suitable and convenient for the purposes aforesaid, and in such case the question whether the place objected to is suitable and convenient shall be settled by arbitration: And if the decision shall be against the lessor, he or his agent shall thereupon set out and appoint some other place for the purpose aforesaid, and the lessee

Places out of which chalk &c., to be got to be appointed by lessor or by reference to arbitration.

shall have the like right of objecting thereto, and of having the question settled by arbitration, and so on from time to time until the lessor or his agent shall set out and appoint some place for the purpose aforesaid, to which the lessee shall not object, or which, upon a reference to arbitration, shall be determined to be suitable and convenient for the purpose aforesaid.

OF STONE QUARRIES.

3. THE LESSEE may from time to time during the said term lay, place, and stack in or upon any convenient part of the said lands all or any of the chalk, lime, stone, sand, and other produce to be gotten under the authority of these presents, and all earth and rubbish which shall be gotten, thrown up, or collected in carrying on the works hereby authorised: AND ALSO may carry and convey all such chalk, lime, stone, sand, and other produce, earth, and rubbish as aforesaid, and all materials used in or about the said works over or along the said lands between the said quarries and pits and the public highway, by means of the road hereinafter covenanted to be made by the lessee: AND ALSO may make, lay down, and place on the said lands such railways and tramways with proper sidings, and other conveniences as shall be necessary or convenient for carrying and conveying any such chalk, lime, stone, sand, and other produce, earth, rubbish, and materials as aforesaid, between the said quarries and pits and the —— Railway, and may use the same railways, tramways, and sidings for the purposes aforesaid: AND ALSO may erect and set up on any convenient part of the said lands, two cottages for the residence of his foreman or workman employed in or about the said works, and such and so many sheds and buildings as he may deem necessary or convenient for carrying on the works hereby authorised, and to use the sheds and buildings now standing on the said lands for the like purposes: AND ALSO may erect and set up on such part or parts of the said lands as the lessor or his agent shall set out and appoint for the purpose (but not elsewhere) such and so many lime-kilns as the lessee may think necessary or expedient for the purpose of converting the said chalk into lime: AND ALSO may do all such other acts and things, and use all such other devices and means for carrying on the works hereby authorised, as shall or may be found necessary or convenient according to the most approved practice in the district.

Liberty to stack chalk, &c.; to convey chalk, &c., over road; to lay down railway, &c.; to erect two cottages for residence of foreman and workmen, and to erect sheds, &c.; to set up lime-kilns in places to be applied by lessor; to do other things, &c., for carrying on works.

4. THE following liberties are reserved to the lessor, namely:

Reservations to

OF STONE QUARRIES.

Lessor of liberty to use road, and to get chalk, &c., out of lands for use of his estate, but not from lessee's pits.

liberty for the lessor and all persons authorised by him to use the road hereinafter covenanted to be made by the lessee either with or without horses, cattle, carts, and carriages: and also liberty for the lessor and all persons authorised by him to dig and get chalk, stone, and sand from or out of any part of the lands coloured pink on the said plan for the use of the estate or the lessor, but not for sale: But this liberty shall not enable the lessor, or any other person to dig or get chalk, stone, or sand from the quarries or pits of the lessee without his consent.

Certain rent.

5. The following rents are hereby reserved for or in respect of the premises hereby demised, and shall be paid by the lessee to the lessor (namely), 1st, the yearly rent of £200 to be paid during the whole of the term hereby granted, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first of such payments to be considered as payable on the —— day of ——, 18—: 2ndly, the rent or sum of 6*d.*, for every ton of stone over and above 10,000 tons which shall or may be gotten from or out of the said lands under the authority of this lease in any year of the said term after the —— day of ——, such royalty to be paid on the —— day of —— in every year, for and in respect of the stone gotten as aforesaid during the then preceding year, and to be in addition to the said yearly rent of £200: And 3rdly, the yearly rent of £20 to be paid for and in respect of each and every lime-kiln exceeding the number of five, which the lessee shall erect or set up on the said lands for the purpose of converting the said chalk into lime to be paid half-yearly, the first payment thereof to be made on the first of the half-yearly days which shall happen next after the lessee shall have commenced erecting and building each and every such additional lime-kiln, and to be paid during the remainder of the said term.

Rent for stone.

Rent for every lime-kiln exceeding five.

Lessee covenants to pay rents, rates, and taxes.

6, 7. The lessee hereby covenants, &c. (*to pay rents and observe provisions and pay rates and taxes, suprà*, p. 99).

To make a road.

8. The lessee shall forthwith commence, and with all convenient speed, prosecute and complete at his own cost in a good and workmanlike manner, and to the satisfaction of the lessor or his agent, a hard and substantial road not less than fifteen yards wide from the said quarries and pits to —— Heath, the site and direction of the said road to be determined by the lessor or his

agent, and shall at all times during the said term, at his own cost, keep the said road in good and substantial repair and condition, and the same in such good repair and condition deliver up to the lessor at the end of the said term, and shall at all times during the said term permit the lessor and all persons authorised by him to use the said road either with or without horses, cattle, carts, and carriages.

To keep account of all stone gotten.

9. For the purpose of ascertaining the amount of rent for stone payable under the above reservation in that behalf, the lessee shall, after the —— day of ——, keep proper and correct books of account, showing the amount of stone gotten from time to time under the authority of these presents, and shall, previously to the —— day of ——, in the year 18—, and in every subsequent year of the said term, deliver to the lessor or his agent a correct abstract of the said books of account for the then preceding year, and shall verify the same by the statutory declaration of himself or his foremen, if required: And shall permit the lessor and his agent at all reasonable times to inspect the said books of account to take extracts therefrom.

To keep cottages, &c., in repair.

10. The lessee shall at all times during the said term keep all cottages, sheds, buildings, lime-kilns, and other erections now standing, or which shall hereafter be erected or set up in or upon the said lands under the authority of these presents, in good and substantial repair and condition, and the same in such good and substantial repair deliver up to the lessor at the end of the said term.

To fence and guard the quarries, &c.

11. The lessee shall at all times during the said term well and effectually fence and guard the quarries, pits, railways, tramways, and other ways now existing, or which shall at any time during the said term be made under the authority of these presents, and shall do as little damage or injury as possible to the surface of the said lands in the exercise of the liberties hereby granted: And shall make full satisfaction to the tenants or occupiers of the said lands for any damage or loss which may be sustained by them by reason of any horses, cattle, sheep, or other animals falling into or getting on the said quarries, pits, railways, tramways, or other ways, or otherwise by the neglect or default of the lessee or his agent, servants, or workmen, the amount of such compensation to be settled by arbitration in case of difference.

OF STONE QUARRIES.

To carry on works properly.

12. THE LESSEE shall at all times carry on the works hereby authorised in a proper and workmanlike manner, and after the best and most approved method of carrying on similar works in the neighbourhood.

Lessor may enter and inspect works.

13. IT shall be lawful for the lessor or his agent at all reasonable times during the said term to enter into and upon the quarries and pits of the lessee, and to inspect the state and condition of the same, and of the works therein, and if any of the said works shall be found to be carried on in an improper and unworkmanlike manner, to give notice in writing to the lessee or his agent to rectify such improper working within ten days after such notice shall have been so given, within which time the lessee shall so far as practicable rectify the same.

14 to end. (*Lessee not to remove plant—power to lessor to purchase plant—lessee not to assign without licence—Covenants by lessor for quiet enjoyment by lessee, and that lessee may remove plant if not purchased—power of distress—power of re-entry—arbitration clause—devolution of rights and obligations—as in last Precedent, suprà*, pp. 124, 125.)

IN WITNESS, &c.

No. XXVIII.

LEASE FOR LIVES.

LEASE *for* LIVES *on the dropping of a* LIFE *pursuant to a* COVENANT *for perpetual* RENEWAL *contained in a* LEASE *for* LIVES *which is* SURRENDERED.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part (*Recite lease for lives of E., F., and G., and lives and life of survivors and survivor of them, and the covenant for renewal contained in the lease,—death of E.*): AND WHEREAS the said C. D. hath requested the said A. B. to grant to him the said C. D. a renewed lease of the said premises pursuant to the covenant for this purpose contained in the said lease, for the

Application for renewed lease.

LEASE FOR LIVES.

Lessor grants premises to lessee for three lives.

lives of F., G., and H. in consideration of a fine of £—— NOW THIS INDENTURE WITNESSETH that, in pursuance of the aforesaid covenant, and in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and in consideration of the surrender of the said recited lease, and of the rent and lessee's covenants hereinafter reserved and contained, he the said A. B. (hereinafter called "the lessor") hereby conveys unto the said C. D. (hereinafter called "the lessee"), ALL, &c. (*parcels*), TO HOLD the same unto the lessee from the date of these presents, for and during the lives of the said F., G., and H., and the lives and life of the survivors and survivor of them, YIELDING AND PAYING therefor during the said term the yearly rent of £——, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the first of such quarterly payments to be made on the —— day of ——. (*Covenant by lessee to pay rent, rates, and taxes during the said term, to keep in repair—to permit lessor to inspect—to insure*): AND THE lessor hereby covenants with the lessee that in case, on the decease of any one of the persons for whose lives this lease is granted, the lessee shall, within six calendar months from the dropping of such life, give to the lessor, or leave at his usual or last known place of abode, a notice in writing requesting a new lease of the premises for the lives of the two survivors of such persons, and the life of one other person to be nominated in that behalf by the person or persons giving or leaving such notice, and shall within the said period pay the sum of £—— to the lessor, by way of fine for the renewal of such lease, then and in such case the lessor shall and will within such period as aforesaid, at the request and cost of the lessee, grant unto him, on the surrender of this present lease, a new lease of the said premises for the lives aforesaid, according to such notice, upon the same or the like terms, and under and subject to the same or the like covenants and provisions as are declared and contained in this present lease, including this covenant for renewal. (*Declaration as to devolution of rights and obligations, suprà,* p. 497).

Covenants by lessor to renew the lease on the dropping of a life.

IN WITNESS, &c.

No. XXIX.

OF RIGHT OF SPORTING.

LEASE *of a* RIGHT *of* SPORTING.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part: WITNESSETH, that in consideration of the rent and lessee's covenants hereinafter reserved and contained, THE said A. B. doth hereby demise unto the said C. D., ALL THAT the exclusive right of hunting, coursing, shooting, fishing, and sporting in, over, and upon the manors of, &c., AND ALSO all that the keeper's lodge situate at —— aforesaid, now in the occupation of —— (except and reserved out of these presents unto the said A. B., his heirs and assigns, the exclusive right of shooting and sporting in, over, and upon the several lands coloured red in the plan hereto annexed, and the exclusive right of fishing in the river A., between the points marked C. and D. on the said plan). To HOLD the said premises unto the said C. D., from the —— day of ——, last past, for and during the term of seven years thence next ensuing, if the said C. D. shall so long live, but subject as regards ground game to the rights of the tenants of the said lands or any of them under the Ground Game Act, 1880. YIELDING AND PAYING therefor, the yearly rent of £——, by equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in each year, with a proportionate part of the said rent, up to the day of the decease of the said C. D. within the said term, the first payment to be made on the —— day of —— next. AND the said C. D. doth hereby covenant with the said A. B., his heirs and assigns, in manner following, that is to say, that he, the said C. D., will pay the said rent at the times hereinbefore appointed for payment thereof, and will also pay all rates and taxes payable in respect of the said keeper's lodge: AND ALSO will, during the said term, at his own cost, keep at least one effective gamekeeper, who shall have the supervision of, and preserve the game upon, the said manors, and who shall live in the said keeper's lodge: AND ALSO that he the said C. D. will, at all times during the said

Demise of right of sporting

to lessee for seven years if he shall so long live.

At yearly rent.

Covenants by lessees,

to pay rent,

and taxes in respect of keeper's lodge.

To keep a gamekeeper.

To preserve game and eggs.

Not to assign or underlet without licence of lessor.

Covenant by lessor for quiet enjoyment by lessee.

And if lessee dies before end of term, to allow him expenses of preserving from end of preceding season.

term, keep up the head of game on the said manors, and will to the best of his power preserve the eggs and young of game birds from being destroyed or injured: AND ALSO will not, at any time, assign or underlet, or otherwise part with this present lease, or the rights and privileges hereby demised, or any of them, to any person or persons whomsoever, without the consent in writing of the said A. B., his heirs or assigns, first had and obtained for that purpose. AND the said A. B. doth hereby covenant with the said C. D., that he paying the yearly rent hereby reserved, and observing and performing the covenants herein contained on his part, shall and may peaceably and quietly have, hold, and enjoy the rights and privileges hereby demised without any lawful interruption from or by the said A. B., or any person or persons claiming through, under, or in trust for him; AND that if this lease shall determine by the death of the said C. D. during the said term, he the said A. B., his heirs or assigns, will pay or allow to the executors, administrators, and assigns of the said C. D., all expenses incurred by the said C. D. in preserving and rearing the game, from the end of the preceding season up to the day of the death of the said C. D.

IN WITNESS, &c.

TRUSTEES (*a*).

Division of subject.

It is proposed in this Dissertation to consider—I. The nature of a trust and the different kinds of trusts. II. The powers and duties of trustees for sale. III. The transmission of powers and trusts. IV. Purchases by a trustee from himself or from his *cestui que trust*. V. The powers of trustees as to the investment of trust moneys, and the provisions of the recent statutes in reference thereto. VI. Disclaimer. VII. Appointments of new trustees, and the powers conferred by statute for this purpose. VIII. The provisions of the Trustee Relief Acts. IX. Miscellaneous points relating to Trustees.

I. *The nature of a trust and the different kinds of trusts.*

Definition of a trust.

A trust may be defined as an obligation attached to the ownership of real or personal property or of some estate in, or power over, real or personal property, binding the person in whom such property, estate, or power is vested, to hold or exercise it for the benefit of some other person or persons, and which obligation is enforceable by means of the equitable jurisdiction of the Court.

(*a*) *Settlements* form the next class of instruments, of which precedents are given in this collection. As the objects of a settlement usually require the intervention of trustees, and as marriage is the ordinary occasion of a settlement, two introductory dissertations, the one on the powers, estates, duties, and responsibilities of *trustees*, and the other on the law affecting the relation of *husband and wife* and their interests in each other's property, are here inserted.

A trust may be a bare trust, or an active trust. A bare trust is where the instrument imposes on the trustee no duty beyond that implied by law from the bare relation of trustee and *cestui que trust*, *e.g.*, where land is vested in A. in trust for B., the simple duty of A. being to convey the land to B., or according to his direction whenever required so to do, and in the meantime to permit him to receive the rents and profits. An *active* trust is where the instrument imposes on the trustee some special duty beyond the simple obligation above referred to, *e.g.*, a trust to sell, or to manage, or to receive the rents and apply them in a particular manner.

Bare trust.

Active trust.

A trust originally active may become a bare trust, either by reason of all the special duties having been performed, or by reason of the obligation to perform such duties having been put an end to by the act of all the persons beneficially interested in their performance, which act is usually called an election. Thus, if land is given to a trustee in trust to apply the rents during the minority of A. for his maintenance, and on his attaining twenty-one in trust for A. in fee simple; the trust becomes a bare trust so soon as A. attains twenty-one. Again, if land is vested in a trustee in trust to sell and divide the proceeds between a number of persons, all of whom, being *sui juris*, join in requesting him not to sell but to convey the land to them as real estate, the trust from the date of such request becomes a bare trust.

How an active trust may become a bare trust.

Election.

The foregoing description of a bare trust naturally leads up to a definition of the term "bare trustee," as used in sec. 6 of the Vendor and Purchaser Act, 1874, and in sec. 48 of the Land Transfer Act, 1875 (which last-mentioned section is, however, repealed as regards any trustee dying after the 31st December, 1881 (*aa*)). It is submitted that a bare trustee may for the purposes of these Acts be defined as "a trustee, who has no duties to perform beyond the simple obligation to convey the land to or according to the direction of his *cestui que trust*, whenever required so to do, and in the meantime to permit him to receive the rents and profits" (*b*).

Bare trustee as the term is used in recent Acts

(*aa*) Conveyancing Act, 1881, sec. 30.

(*b*) Messrs. Dart and Barber (Dart, V. & P. p. 517) conclude that

Express and constructive trusts.

Trusts may be also divided into *express* trusts, and *implied*, or *constructive* trusts, and this distinction is rendered important by sec. 25 of the Statute of Limitations, 3 & 4 W. 4, c. 27, which excepts express trusts from the operation of the general enactment.

What is an express trust.

An *express* trust has been defined to be a trust expressly declared by a deed, will, or other written instrument (*c*), and this definition seems correct and exhaustive as applied to land. But an express trust may be created of chattels or personal property without any writing, as by a deposit of them with a factor or agent for a particular purpose (*cc*).

Instances of implied or constructive trusts.

An *implied* or *constructive* trust is one arising by implication or construction of law from certain circumstances; as, where land is purchased by and conveyed to A., but with money belonging to B., A. is treated as a trustee for B. unless there is such a relation between the parties as will lead to the presumption that a gift was intended by B. to A. Again, if land is conveyed to a trustee, upon trusts which partly fail or do not exhaust the whole legal interest conveyed, there will, as a general

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the term will be held to mean "a trustee to whose office no duties were originally attached, or who, although such duties were originally attached to his office, would on the requisition of his *cestui que trust*, be compellable in equity to convey the estate to them, or by their direction, *and has been requested by them so to do*." This definition has been approved by V.-C. Hall, with the omission of the words in italics (Christie *v.* Ovington, L. R. 1 Ch. D. 279).

It is submitted that Messrs. Dart and Barber's definition is not quite correct either with or without the words in italics proposed to be omitted by the Vice-Chancellor.

Suppose land to be vested in A. in fee simple in trust to sell and divide the proceeds between B. and C., it is clear that B. and C. being *sui juris* might require A. to convey the land to them, and it is apprehended that until such requisition is made he is not a bare trustee. On the other hand, if land is vested in A. in fee simple in trust for B. in fee simple, there can be no doubt that A. is a bare trustee, even though he has not been requested to convey the legal estate to B. It is submitted that Messrs. Dart and Barber's definition should run thus, "A trustee who has no duties attached to his office which remain to be performed, and who would on the requisition of his *cestui que trust* be compellable in equity to convey the legal estate to them, or according to their direction." This is very similar to the definition in the text. See Morgan *v.* Swansea Urban Authority, L. R. 9 Ch. D. 582, in which Jessel, M. R., seemed to think that a bare trustee meant a trustee without any beneficial interest; but this is not the ordinary acceptation of the term among conveyancers.

(*c*) Petre *v.* Petre, 1 Drew. 393.

(*cc*) Burdick *v.* Garrick, L. R. 5 Ch. 233; Banner *v.* Berridge, 18 Ch. D. 264.

rule, be an implied trust to the extent of the undisposed of interest for the grantor, which trust is usually called a resulting trust. Again, after a contract for sale of land, the vendor is deemed a trustee for the purchaser subject to the payment of the purchase-money. So also it is a rule that a trustee cannot derive any personal advantage from the administration of the trust property, and consequently if a trustee renews a lease in his own name, he will be deemed to hold the new lease for the benefit of his *cestui que trust.*

Against whom a trust may be enforced.

A trust may be enforced against the person in whom it was originally reposed, and all persons deriving title to the property under him, whether by descent, representation, conveyance, or devise, other than purchasers for valuable consideration without notice of the trust.

On death or disclaimer of trustee appointed by will, legal estate descends to heir subject to trust.

If a testator leaves property upon trusts, and the trustee dies in his lifetime or disclaims, the legal estate will devolve on the heir-at-law, who will take it subject to the trust.

II. *Powers and duties of trustees for sale.*

Duties of trustees for sale as to price and mode of sale.

Trustees for sale should use proper diligence to obtain the best price, and should take care to satisfy themselves as to the value of the property before they proceed to a sale (*d*). If by the terms of the trust they are not limited to any particular mode of sale, they may sell either by public auction or private contract, but as a general rule they should not sell by private contract at a sum below what the property has been previously valued at; and if they sell by auction, they should properly advertise the intended sale.

As to conditions of sale.

Trustees may sell in one lot or in several lots and subject to conditions applicable to the state of the title, but they must not impose conditions calculated to depreciate the property without reasonable ground, even though authorized by the terms of the trust to

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(*d*) Conolly *v.* Parsons, 3 Ves. 625, note; Campbell *v.* Walker, 5 Ves. 678; Ord *v.* Noel, 5 Mad. 438. See also Harper *v.* Hayes, 2 De G. F. & J. 542; Selby *v.* Bowie, 4 Giff. 300.

sell "subject to such stipulations as to title as they may think fit." (*e*).

Reserved biddings.

A trustee may fix a reserved bidding at a sale by auction and buy in, if that bidding is not reached (*f*), but in this, as in other matters relating to the trust, he must act providently. Unless authorized by the terms of his trust to defer a sale, his duty is to sell as soon as he conveniently can; if he does not, and the property falls in value, he runs the risk of being held answerable for the loss, particularly if he has in the meantime bought in at an auction at a sum higher than that ultimately realized, or otherwise refused a fair offer (*g*).

Powers conferred on trustees for sale by Conveyancing Act, 1881.

The above observations apply generally, whether the trust has been created before or since the 31st December, 1881, but as regards trusts created since that day, it is expressly provided by the Conveyancing, Act, 1881 (*h*), that where a trust for sale or a power of sale is vested in trustees, they may sell either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter as they may think fit, with power to vary any contract for sale and to buy in or rescind any contract for sale, and resell without being answerable for loss.

Trust for sale must be exercised in accordance with conditions prescribed.

A trust for sale to take effect at a future time, or on certain conditions, can only be exercised at the time and in accordance with the conditions prescribed. Thus, where a testator devised an advowson to trustees upon trust to sell on the death of A. A. was the incumbent, so that on his death no sale could be made until the vacancy was filled up. It was held that the Court had no jurisdiction to authorize a sale in A.'s lifetime, on the ground that it would be beneficial to the parties (*i*). Again, where a testator gave real and personal estate to trustees upon trust for sale, and declared that no sale

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(*e*) Dance *v.* Goldingham, L. R. 8 Ch. App. 902.

(*f*) *Re* Peyton's Settlement, 30 Beav. 252.

(*g*) Taylor *v.* Tabrum, 6 Sim. 281; Fry *v.* Fry, 27 Beav. 144; Sug. V. & P. 50.

(*h*) Sect. 35.

(*i*) Johnstone *v.* Baber, 8 Beav. 333.

should be made without the consent in writing of his sons and daughters, it was held that a contract entered into by the trustees after the death of one of the daughters could not be specifically enforced, although her representative concurred (*k*).

But a trust to sell within a given time may be exercised afterwards.

But a trust to sell within a given time will not preclude the trustees from selling after that time, if the nature of the trusts requires that there must certainly be a sale notwithstanding the lapse of time, either by the trustees or by the Court (*kk*).

Sale of land without timber, or surface without mines.

Trustees for sale must sell the timber with the estate, although the tenant for life is unimpeachable for waste (*l*), and in the recent case of *Buckley* v. *Howell* (*m*), it was decided that the ordinary power of sale and exchange does not authorize a sale by the trustees of the surface, reserving the minerals. In consequence of this decision, which affected many existing titles, an Act was passed (*n*) which confirmed all sales, exchanges, partitions, and enfranchisements previously made, of the surface without the minerals, or of the minerals without the surface, and authorized similar dispositions in future, with the sanction of the Court (*o*). This Act was held to apply to mortgagees with a power of sale as well as to trustees strictly so called (*p*).

Surface and minerals may be sold, &c., separately under Settled Land Act.

The last mentioned Act is practically superseded by sect. 17 of the Settled Land Act, 1882 (*q*), which enables the surface and the minerals to be sold, exchanged, or leased separately under the powers of that Act.

Trustees selling under a power need not have in view any particular reinvestment in land.

It seems clear that under a power of sale in the usual form directing that the sale money be laid out in the purchase of other lands and authorizing interim investments of it until so laid out, the trustees need not at the time of sale have in view any particular estate to be purchased with the proceeds (*r*). Consequently the pro-

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(*k*) Sykes *v.* Sheard, 33 Beav. 114.

(*kk*) *Re* Morley's Will, 9 Hare, 293.

(*l*) Cockerell *v.* Cholmeley, 1 R. & M. 418.

(*m*) 29 Beav. 546.

(*n*) 25 & 26 Vict. c. 108.

(*o*) Secs. 1, 2.

(*p*) *Re* Wilkinson's Estates, L. R. 13 Eq. 634.

(*q*) 45 & 46 Vict. c. 38.

(*r*) 2 Sug. Pow. 487; and cases there referred to.

vision in Lord Cranworth's Act (*s*) exempting purchasers from obligation to inquire whether any particular reinvestment is in contemplation, was superfluous.

Unlimited powers of sale in a settlement valid.

A power of sale vested in trustees by a settlement, the proceeds being directed to be laid out in the purchase of lands to be settled to the like uses as the lands sold, or being otherwise liable to trusts corresponding with those uses, does not transgress the rule against perpetuities, although no limit is imposed by the terms of the instrument as to the period during which it may be exercised. Such a limit is in fact implied from the nature and object of the power, which is intended to enable alienation during the continuance of the particular estates created by the settlement, and when those estates determine and the lands become vested in fee simple in possession, either under the ultimate limitation in the deed or by reason of a disentailing assurance, the power ceases also. Thus, if lands are settled on A. for life, with remainder to the sons of A. successively in tail, with remainder to B. in fee simple, and a power of sale unlimited in terms is vested in trustees, such power remains in force during A.'s life, and if he leaves male issue until a tenant in tail attains twenty-one and bars the entail, and upon that event happening, or on the death of A. if he has no male issue, the power ceases (*t*). And it seems that the existence of a jointure rent-charge, the fee simple being vested in possession subject to such jointure, will not keep alive the power (*u*).

Such powers cease when the estate vests in fee simple in possession.

Power remains although an undivided share has become vested in possession.

If property is settled, as to one undivided share for one class of persons, and as to the other share for another class, the fact of one share having become absolutely vested in possession does not put an end to the power, which remains in force until the entirety has become so vested (*x*).

(*s*) 23 & 24 Vict. c. 145, s. 2, now repealed.

(*t*) Mortlock *v.* Buller, 10 Ves. 315; Biddle *v.* Perkins, 4 Sim. 135; Waring *v.* Coventry, 1 M. & K. 249; Nelson *v.* Callow, 15 Sim. 353; Lantsbury *v.* Collier, 2 K. & J. 709.

(*u*) Wheate *v.* Hall, 17 Ves. 86. The decision of V.-C. Bacon, in *Re* Cooke's Contract, 4 Ch. D. 454, seems primâ facie to conflict with the doctrine stated in the text, but his Honour must have considered in that case that the authority to sell was an absolute trust for conversion, and not a mere power. See note (*xx*) in next page.

(*x*) Trower *v.* Knightley, 6 Mad.

Doctrine does not apply where power is for purpose of division.

The doctrine that a power of sale unlimited in terms ceases so soon as the property becomes absolutely vested, does not (in the opinion of Jessel, M. R.) apply to a case where the power is made to take effect on the coming into existence of the absolute limitation, *e.g.*, where property is given to trustees in trust for a class of persons absolutely, with a power to sell "for the purpose of division." His Lordship considered that a power of this kind was from its nature exercisable within a reasonable time, and therefore valid (*xx*).

Power, limited in terms, may continue after property has become vested.

Where a power of sale is conferred so as in terms to be exercisable only within the permitted period, such a power remains in force notwithstanding that the property has become absolutely vested, if such appears to be the settlor's intention and there has been no election by the *cestuis que trustent* to put an end to it (*y*).

Power of sale, where it authorizes a mortgage.

A power to sell in order to raise a sum of money implies, it has been said, a power to mortgage, which is a conditional sale (*yy*); but this is only the case when the purpose of the trust will be answered by a mortgage, for if the intention appears that a sale out and out shall be made, a mortgage will not be a valid exercise of the power (*z*).

A partition authorized by power of exchange but not by a power of sale.

A power of sale does not authorize a partition (*a*), and until lately it was considered doubtful whether a partition could be carried into effect under a power of exchange (*b*). But the doubt on this point may be

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134; Taite *v.* Swinstead, 26 Beav. 525; *Re* Brown's Settlement, L. R. 10 Eq. 349.

(*xx*) Peters *v.* Lewes, &c., Rail. Co., 18 Ch. D. 429. The view of the M. R., as stated above, and also the decision of Bacon, V.-C., in *Re* Cooke's Contract, 4 Ch. D. 454, may be supported by considering that where there is a trust to divide with a power to sell for the purpose of division, the power is not a power in the proper sense of the term, *i.e.*, an authority to defeat or divest interests vested in default of its exercise, but is merely part of the machinery for carrying out the trust for division. It is in effect a trust to divide the property among the objects either by selling and distributing the proceeds, or by specific allotments or otherwise.

(*y*) *Re* Cotton's Trustees *v.* The London School Board, 19 Ch. D. 624.

(*yy*) Mills *v.* Banks, 3 P. Wms. 9.

(*z*) 1 Sug. Pow. 538; Haldenby *v.* Spofforth, 1 Beav. 390; Stroughill *v.* Anstey, 1 De G. M. & G. 635; Devaynes *v.* Robinson, 24 Beav. 86.

(*a*) M'Queen *v.* Farquhar, 11 Ves. 467.

(*b*) Dart V. & P. 78; Sug. Powers, pp. 856, 857, 859.

considered as set at rest by a recent case (*c*), where Jessel, M. R., reviewed all the authorities, and arrived at the conclusion that a partition of an estate held in moieties could be made under such a power, and intimated his opinion, although it was not necessary to decide the point, that there was no difference in this respect between an estate held in moieties, and one held in a greater number of undivided shares (*d*).

Land remains real estate, until power is exercised.

Land subject to a discretionary power of sale, retains its character of real estate, until sale (*dd*).

Trust property may be sold conjointly with other property.

Trust property may be sold conjointly with property belonging to other persons or held on different trusts, if by reason of the situation of the two properties, or for any other reason, a joint sale is likely to produce a better price than separate sales (*e*). On this principle a joint sale by trustees of the reversion expectant on a lease, and by the owner of the lease, was held good (*f*). In the case of a joint sale the trustees have authority to agree with the other vendor as to the apportionment of the purchase-money, which must be done before the purchase is completed, and the purchaser dividing his money according to such apportionment is safe unless he has notice that the apportionment is an improper one (*g*). If, however, the two properties are so situate that, *primâ facie*, nothing will be gained by a joint sale, the *onus* lies on the trustee to show that it is a prudent and right thing (*h*).

Contract if a breach of trust not enforced.

If a trustee enters into a contract of sale which is under the circumstances a breach of trust as between himself and his *cestui que trust*, the Court will refuse to enforce its specific performance either at the suit of the vendor or of the purchaser, and will even at the suit of the *cestui que trust* restrain the vendor from carrying it

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(*c*) Frith *v.* Osborne, L. R. 3 Ch. D. 618.

(*d*) See also Abel *v.* Heathcote, 4 B. C. C. 278; Doe *v.* Spencer, 2 Exch. 752.

(*dd*) Walter *v.* Maunde, 19 Ves. 424.

(*e*) Cavendish *v.* Cavendish, 10 Ch. App. 319; *Re* Cooper, &c., 4 Ch. D. 803. As to the including of two trust properties in one mining lease, see Tolson *v.* Sheard, 5 Ch. D. 19.

(*f*) Morris *v.* Debenham, 2 Ch. D. 540.

(*g*) *Re* Cooper, &c., *ubi suprà.*

(*h*) *Ibid.*

into effect, leaving the purchaser to his remedy in damages, if any (*i*). If under such a contract the property has been actually conveyed to the purchaser, the question whether it will be set aside will depend on whether he had notice of the breach of trust.

Under old law trustees could give good receipts in certain cases only.

According to the old law, a purchaser from a trustee was liable to see that his purchase-money was properly applied, unless the instrument expressly declared that the trustee's receipt should be a good discharge, or unless such an intention was to be inferred from the nature of the trust.

Statutory powers to give receipts.

But by the 23rd section of the 22 & 23 Vict. c. 35, it is enacted that "the *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security."

And in the Conveyancing Act, 1881, section 36, it is provided that "the receipt in writing of any trustees or trustee for any money, securities, or other personal property payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same, from seeing to the application or being answerable for any loss or misapplication thereof," and this enactment is made applicable to trusts created either before or after the commencement of the Act.

All the trustees must join in the receipt.

Liability of trustee joining in receipt for conformity.

All the trustees must join in the receipt in order to give a valid discharge to the person paying the money. But when the money is in fact received by one of several trustees, the others joining in the receipt for the sake of conformity, any trustee so joining is not necessarily liable to the *cestui que trust* as if he had actually received

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(*i*) Mortlock *v.* Buller, 10 Ves. 392; Ord *v.* Noel, 5 Madd. 438; Turner *v.* Harvey, Jac. 169; Rede *v.* Oakes, 4 De G. J. & S. 513; Dance *v.* Goldingham, L. R. 8 Ch. App. 913.

it. If, however, he permits his co-trustee to retain and act with it contrary to the trust, he becomes liable for the misapplication (*j*).

Executor's receipt for proceeds of chattels real.

Chattels real vest in the executor for the payment of the testator's debts, so that, although they may be specifically bequeathed, the executor's receipt is a sufficient discharge for the proceeds of the sale thereof (*jj*).

Trusts or powers of sale vested in trustees of settled land are subordinate to powers of tenant for life under Settled Land Act.

It will be borne in mind that whenever land is settled within the meaning of the Settled Land Act, 1882, so that there is under the deed or will creating the settlement a tenant for life or any person placed by the Act in the position of a tenant for life, by whom the statutory powers of sale, exchange, leasing, &c., can be exercised, then all trusts or powers for the same purpose given by the settlement to trustees are subordinate to the statutory powers and cannot be exercised without the consent of the person in whom those powers are for the time being vested. Thus, if real estate is given to trustees in trust to sell at their absolute discretion, and the proceeds are to be held in trust for A. for life, A.'s consent will be necessary to a sale by the trustees.

III. *The transmission of powers and trusts.*

Power when exerciseable by survivors.

A power, properly so called, *i.e.*, an authority enabling the donees to revoke or alter interests existing in default of and until its exercise, must be strictly followed, and can only be exercised by the persons named or indicated for that purpose by the instrument creating it. Thus a power of this kind given to several persons by name and their heirs cannot be exercised by the survivors, and this is so even when the persons so named are trustees (*k*), except in cases coming within sec. 38 of the Conveyancing Act, 1881. But a power given to persons by some general description, as "my trustees," and not by their names, may (independently of the Act) be exercised by the survivors, or other the persons answering the descrip-

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(*j*) Brice *v.* Stokes, 11 Ves. 319.

(*jj*) Dart, V. & P. 548.

(*k*) Townsend *v.* Wilson, 1 B. & Ald. 608; Hall *v.* Dewes Jacob, 189.

tion, so long as the plural number remains (*kk*). And it is now provided by the Conveyancing Act, 1881, s. 38, with respect to executorships and trusts created after the 31st December, 1881, that where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed, the same may be exercised or performed by the survivors or survivor of them for the time being. In a case where a testator gave a power to his "said trustees," and the survivor of them, and one disclaimed, it was held, that the sole acting trustee could exercise it (*l*).

Trust follows the estate.

A trust, as distinguished from a mere power, follows the estate, and is exerciseable by the persons or person on whom the estate devolves by law. Thus, if land is devised to two or more persons in trust to sell (*m*), or in trust that they or their heirs and assigns shall sell, the trust will be exerciseable by the survivors or survivor, and by the heir of the survivor, if he has died before the 1st January, 1882, intestate as to trust estates (*n*). And in a case where the devise was to the trustees, their *respective* heirs and assigns, upon trust that they, their *respective* heirs and assigns, should sell, the word "respective" was rejected, and it was held that the survivor might perform the trust (*o*).

Trustee cannot delegate the trust by act *inter vivos*, except under power to appoint new trustees.

It does not follow that a trustee by vesting the trust property in another by his own act, can delegate to that other the duty of executing the trust. On the contrary, it is clear that he cannot do so, by act *inter vivos* (*p*), except under a power of appointing new trustees contained in the trust instrument, or the statutory power for that purpose. Whether, before the recent Act, he could do so by will, has been the subject of several cases.

Devisee of trustee can execute trust, if word

In *Cooke* v. *Crawford* (*q*), there was a gift to trustees in trust that they and the survivor of them and the

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(*kk*) 1 Sug. Pow. 144; Byam *v.* Byam, 19 Beav. 58.

(*l*) Eaton *v.* Smith, 2 Beav. 236.

(*m*) Lane *v.* Debenham, 11 Hare, 188; Watson *v.* Pearson, 2 Exch. R. 581.

(*n*) *Re* Morton and Hallett, L. R. 15 Ch. D. 143.

(*o*) Jones *v.* Price, 11 Sim. 537.

(*p*) Bradford *v.* Belfield, 2 Sim. 264.

(*q*) 13 Sim. 91.

"assigns" is used. If word "assigns" is omitted, held in some cases that he cannot.

heirs of such survivor should sell, and it was held that the last surviving trustee was not authorized to devise the trust estate, and consequently that his devisee could not sell. In *Titley* v. *Wolstenholme* (*r*), the trust was made exerciseable by the survivor of the trustees, his heirs and *assigns*, and it was held in this case that the devisee could execute the trust. Since these decisions it has generally been considered that the right of the devisee to succeed to the trusteeship depends on whether "assigns" are mentioned in the trust instrument as among the persons by whom the trust is exerciseable (*s*), and in several cases where the word "assigns" was omitted, the Court has declined to compel a purchaser to accept a title from the devisee. It has also been held that where in the absence of the word "assigns" a trustee devises the trust estate, neither the devisee, nor the heir or personal representative, can execute the trust, the former because not within the terms of the trust, and the latter because he has not the legal estate (*t*).

Decision of Jessel, M.R., in favour of devisee notwithstanding absence of word "assigns."

It should be borne in mind that in all the cases above referred to, the question arose between vendor and purchaser, and according to the then practice of the Court it was a sufficient reason for deciding in favour of a purchaser that the title was open to reasonable doubt. In a recent case (*u*) where real estate was devised to trustees and their heirs (omitting "assigns") in trust to sell, Jessel, M.R., after noticing that according to the altered practice he was bound to decide the question between vendor and purchaser, arrived at the conclusion that *Cooke* v. *Crawford* was not confirmed by any of

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(*r*) 7 Beav. 425.

(*s*) Hall *v.* May, 3 K. & J. 585; Ashton *v.* Wood, 3 S. & G. 436; Stevens *v.* Austin, 3 E. & E. 436; Wilson *v.* Bennett, 5 D. & S. 475; *Re* Burtt's Estate, 1 Drew. 319.

(*t*) Wilson *v.* Bennett, 5 D. & S. 475; *Re* Burtt's Estate, 1 Drew. 319. It is difficult to understand the ground of these decisions. If the founder of the trust intended that the heir or legal personal representative should succeed to the trusteeship, and that the trustees should not be allowed to defeat this intention by a devise, the natural conclusion would be that the irregularity might have been cured by the devisee conveying the legal estate so as to vest it in the person on whom it ought to have been allowed to devolve, or by his joining with that person in conveying it to a purchaser.

(*u*) Osborne *v.* Rowlett, 13 Ch. D. 774.

the subsequent cases, and that it was irreconcileable with and impliedly overruled by *Titley* v. *Wolstenholme*, and he decided in favour of the devisee on the broad ground that the person who takes the estate should be the person to execute the trust, and that inasmuch as the founder of the trust could not have reposed personal confidence in the trustee's unascertained heir any more than in his unascertained devisee, there was no reason why the latter should not be allowed to succeed to the trusteeship as well as the former. But in a still more recent case (*v*), the Lords Justices of Appeal intimated an opinion, though it was not necessary to decide the point, that *Cooke* v. *Crawford* was still a binding authority, so that, in cases not within the recent Act, the right of the devisee to execute a trust which by the terms of the instrument is not made exerciseable by assigns, must be considered as still doubtful.

M. R.'s decision doubted by Lords Justices.

Question still doubtful.

By the Conveyancing Act, 1881, section 30, it is provided as regards a trustee dying after the 31st December, 1881, that "where an estate or interest of inheritance in any hereditaments, corporeal or, incorporeal, is vested on any trust, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives from time to time, in like manner as if the same were a chattel real; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to his personal representatives from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers."

By recent Act trust estate devolves on personal representatives of deceased trustee.

The above enactment applies to all trustees and not bare trustees only, and sect. 48 of the Land Transfer

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(*v*) Morton *v.* Hallett, 15 Ch. D. 143.

Act, 1875, is repealed, as to cases occurring after 31st December, 1881.

But not a power unaccompanied by any estate.

The effect of the above enactment is that upon the death of a trustee dying after the 31st December, 1881, the legal estate in the trust property, and also the rights and obligation to exercise the trusts, pass to his personal representatives. But a mere power, unaccompanied by an estate in the land, is not affected by the section. If, therefore, by a strict settlement a power of sale and exchange is vested in trustees without the addition of the words "and the survivors and survivor of them and the executors or administrators of such survivor," the power though exerciseable by the survivors and survivor, would not on the death of the last survivor pass to his personal representatives.

Heir at law on whom legal estate devolves by reason of death or disclaimer of trustees cannot exercise trusts involving discretion.

Where by reason of the death or disclaimer of the trustees appointed by a will, the land devolves on the heir at law, subject to the trusts, which trusts are of a nature involving the exercise of judgment and discretion, as, *e.g.*, a trust to sell or to lease, the heir cannot himself execute them (*w*), but new trustees must be appointed, and the heir will be compelled to execute all proper deeds for vesting the legal estate in them.

IV. *Purchases by a trustee from himself or from his cestui que trust.*

Trustee for sale cannot buy from himself.

A trustee for sale cannot purchase the trust property from himself, nor, where there are several trustees, can one buy from the others. The sale is not, however, void *ab initio*, but is liable to be set aside, as a matter of course, by the *cestui que trust*, provided that he applies to the Court for that purpose within a reasonable time; and it is not necessary to show that the trustee has taken any advantage. If prior to the setting aside of the sale, the trustee has sold at an increased price, the *cestui que trust* may claim the advantage (*e*).

(*w*) Brown *v.* Higgs, 8 Ves. 561; Robson *v.* Flight, 34 L. J. Ch. 226, 4 De G. J. & S. 608.

(*e*) Fox *v.* Mackreth, 2 B. C. C.

The Court will, however, sometimes authorize a purchase by a trustee of the trust property on being satisfied that such purchase is for the benefit of the *cestui que trust* (*f*). It is conceived that in all such cases the trustee applying for leave to purchase would have to pay the costs of the suit.

Court will sometimes authorize purchase by trustee.

With regard to purchases by a trustee from his *cestui que trust*, the rule has been thus stated by Lord Eldon: "The rule I take to be this, not that a trustee cannot buy from his *cestui que trust*, but that he shall not buy from himself. If a trustee will so deal with his *cestui que trust* that the amount of the transaction shakes off the obligation that attaches upon him as trustee, then he may buy. The rule is, that a trustee who is entrusted to sell and manage for others undertakes in the same moment in which he becomes a trustee not to manage for the benefit and advantage of himself. It does not preclude a new contract with those who have entrusted him. The *cestuis que trust* may, by a new contract, dismiss him from the character of trustee; but even that transaction, by which they dismiss him, must, according to the rules of this Court, be watched with the most guarded jealousy; and for this reason, that the law supposes him to have acquired all the knowledge a trustee may acquire, which may be very useful to him, but the communication of which to the *cestui que trust* the Court can never be sure he has made when entering into the new contract by which he is discharged. Whether the trustee has made advantage or not, if the connection does not satisfactorily appear to have been dissolved, it is in the choice of the *cestuis que trust* whether they will take back the property" (*g*). In another case it was observed by the same judge, "It is not, in my opinion, necessary to show that the trustee has made an advantage. The principle is, that as the trustee is bound by his duty to acquire all the knowledge possible to enable him to sell to the utmost advantage

Purchases by trustee from *cestui que trust* under what circumstances valid.

400; Killick *v.* Flexney, 4 *ib.* 161; Campbell *v.* Walker, 5 Ves. 609.

(*f*) Farmer *v.* Dean, 32 Beav. 327.

(*g*) *Ex parte* Lacey, 6 Ves. 625.

for the *cestui que trust*, the question what knowledge he has obtained, and whether he has fairly given the benefit of that knowledge to the *cestui que trust* which he always acquires at the expense of the *cestui que trust*, no Court can discuss with competent sufficiency or safety to the parties" (*h*).

Where *cestui que trust* takes upon himself management of trust property.

In a case where the *cestui que trust* had full information, and took upon himself the management of the property and of the sale, making or directing the surveys and fixing the value, a purchase by the trustee from such *cestui que trust* was supported, the Court observing, "As to the objection to a purchase by the trustee, the answer is that a trustee may purchase from the *cestui que trust* provided there is a clear and distinct contract, ascertained to be such after a jealous and scrupulous examination of all the circumstances, that the *cestui que trust* intended the trustee should buy, and there is no fraud, no concealment, no advantage taken by the trustee of information acquired by him in the character of trustee" (*i*).

Sale by trustees to tenant for life valid.

Purchase by bare trustee or disclaiming trustee good.

A sale by trustees under a power of sale and exchange to the tenant for life, whose consent is necessary to the exercise of the power, is a valid transaction (*j*), the reason being, that the power of giving or withholding his consent is given to the tenant for life for his own benefit, and he is not in a fiduciary position with respect to it (*k*). But a tenant for life cannot, under the power of sale conferred on him by the Settled Land Act, 1882, sell to himself (*kk*). And the rule that a purchase by a trustee from his *cestui que trust* is liable to be impeached does not apply to a bare trustee who has no duties to perform, as, for example, to a trustee to preserve contingent remainders, or to a case where land is given to A. in fee in trust for B. (an adult) in fee. In either of these cases the trustee may purchase from

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(*h*) *Ex parte* James, 8 Ves. 348.

(*i*) Coles *v.* Trecothick, 9 Ves. 246. See also Downes *v.* Grazebrook, 3 Mer. 208; Luff *v.* Lord, 34 Beav. 220; Dover *v.* Buck, 11 Jur. 580.

(*j*) Howard *v.* Ducane, T. & R. 81.

(*k*) Dicconson *v.* Talbot, L. R. 6 C. A. 32.

(*kk*) Sect. 53.

the beneficiaries of the property (*l*). And a disclaiming trustee may purchase from the acting trustee (*m*).

Purchase by trustee at auction not good as between his heir and next of kin.

In a case where a trustee for sale bought the trust property at an auction and died intestate, it was held as between the heir and next of kin of such trustee, that the heir was not entitled to have the contract completed for his benefit (*n*).

Terms on which a re-conveyance by trustee will be ordered.

The terms on which the Court decrees a re-conveyance of trust property purchased by the trustee are, in the absence of actual fraud, the re-payment by the *cestui que trust* of the purchase-money, with interest at 4 per cent., and the value of all substantial improvements, the trustee on the other hand accounting for the rents, or if he has been in possession, being charged with an occupation rent (*o*).

V. *The powers of trustees as to the investment of trust monies.*

Power of trustees as to investment.

Previously to recent statutes, a trustee under an instrument which contained no express power of investment was bound to invest in £3 per Cent. Annuities.

Investments which may be made of trust funds by law.

But under the operation of recent statutes (*p*) a trustee not expressly forbidden so to do by the terms of his trust, may now invest in any of the parliamentary stocks or public funds, or in any security the interest of which is guaranteed by Act of Parliament, or in Stock of the Bank of England, or Ireland, or East India Stock, charged on the revenues of India, or in Metropolitan Consolidated Stock (*q*), or on real securities in any part of the United Kingdom.

What investments may be made where power extends to

And where trustees are authorized by the terms of their trust to invest in bonds or debentures of Railway Companies, they may buy debenture stock of such com-

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(*l*) Parkes *v.* White, 11 Ves. 209; Pooley *v.* Quilter, 4 Drew. 184.

(*m*) Stacey *v.* Elph, 1 M. & K. 195.

(*n*) Ingle *v.* Richards, 28 Beav. 361.

(*o*) Lewin on Trusts, p. 340.

(*p*) 22 & 23 Vict. c. 35, s. 32; 23 & 24 Vict. c. 38, ss. 10-12; 30 & 31 Vict. c. 132. Order of Court of Chancery, dated 1st Feb. 1861.

(*q*) Metropolitan Board of Works Act, 1871, s. 13.

Railway debentures.

panies (*r*), or the nominal debentures or debenture stock issued by local authorities under the Local Loans Act, 1875 (*s*), but a power to invest in the securities of a Railway Company does not authorize a purchase of Preference shares (*t*).

Capital money arising under Settled Land Act, or otherwise liable to be laid out in purchase of land, how it may be invested.

Capital money arising under the Settled Land Act, 1882, and also any money in the hands of trustees which under any existing settlement is liable to be laid out in the purchase of land to be settled, may be invested not only on any securities authorized for trust money by law, but also on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares (*tt*).

Power of investment carries with it a power to vary investments.

A power to invest trust monies carries with it the power to vary the investments, and under a power to invest in the public funds, the trustees may sell out stock and invest the proceeds in any security now authorized by law for trust funds (*u*), but in a case where a sum of Bank Annuities was settled without any express power to change the investment, it was held that no change could be made under the statutory power (*v*).

What proportion of value may be advanced on mortgage.

Where an instrument authorizes the trustees to lend on real security, they may as a general rule safely advance on freehold lands to the extent of two-thirds of their value; but an advance to this extent should not be made on the security of buildings, or of any other property of a fluctuating or deteriorating character (*w*). And in such case they should take due precaution to ascertain the value and completeness of the security (*x*).

Mortgage of leaseholds not a real security.

A trustee may not lend on the security of leaseholds without a special authority (*y*). A power to invest in

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(*r*) 34 Vict. c. 27.

(*s*) 38 & 39 Vict. c. 83, s. 27.

(*t*) Harris *v.* Harris, 29 Beav. 107.

(*tt*) Sect. 21, 33.

(*u*) *Re* Clergy Orphan Corporation, L. R. 18 Eq. 280.

(*v*) *Re* Ward, 2 J. & H. 191.

(*w*) Stickney *v.* Sewell, 1 M. & Cr. 8; Stretton *v.* Ashmall, 3 Drew. 9; Budge *v.* Gummow, L. R. 7 Ch. 719.

(*x*) M'Leod *v.* Annesley, 16 Beav. 600.

(*y*) Fyler *v.* Fyler, 3 Beav. 550; Fuller *v.* Knight, 6 Beav. 205.

real securities does not (according to Jessel, M. R.) authorize an investment on mortgage of land held for a long term of years (*z*). But this difficulty may now be got over by converting the term into a fee simple, under sec. 65 of the Conveyancing Act, 1881.

Turnpike tolls and railway debentures.

In *Robinson* v. *Robinson* (*a*) it was held that turnpike road bonds, and mortgages of the tolls and toll-houses were real securities; so that under a will containing a power to invest in real securities, the trustees were justified in retaining a part of the testator's property which was thus invested. It may be gathered, however, from the observations of the Court in that case, and from more recent cases, that a new investment in such securities would not be considered a proper exercise of a power to invest in real securities; and it has been expressly decided that such a power does not authorize an investment on railway debentures (*aa*).

Trustees may waive the power of sale in a mortgage.

Although a power of sale is usually inserted in mortgages, it was not, prior to Lord Cranworth's Act, a breach of trust to accept the security without such a power (*b*), and it is apprehended that a trustee would be justified, if acting *bonâ fide*, not only in dispensing with an express power, but also in negativing the application of the statutory power.

Lending on personal security.

Trustees cannot lend on personal security under a power to invest the trust funds at their discretion (*d*), or under a direction to lay out "on such good security as the trustees can procure and may think safe" (*e*); and in a case where trustees were authorized to invest on any securities they might think fit, it was held that an investment in the preference stock of a railway company bearing a high rate of interest was not authorized, because such security could not be considered as a permanent one (*f*).

Extent of liability of

If trustees retain uninvested, or on an improper

(*z*) Re Boyd's Settled Estates, 14 Ch. D. 626.

(*a*) 1 De G. M. & G. 247.

(*aa*) Mant *v.* Leith, 15 Beav. 524; Mortimore *v.* Mortimore, 4 De G. & J. 472.

(*b*) Farrar *v.* Barraclough, 2 Sm. & Gif. 231.

(*d*) Pocock *v.* Reddington, 5 Ves. 794.

(*e*) Wilkes *v.* Steward, Coop. 6.

(*f*) Stewart *v.* Sanderson, L. R. 10 Eq. 26.

trustees in case of improper investment.

investment, money which, by the terms of their trust, they ought to have invested in the 3 per Cents., the *cestuis que trust* have the option of charging the trustees either with the principal sum retained and interest thereon at 4 per cent., or with the amount of the 3 per Cents. which would have been purchased if the money had been properly invested. Again, if trustees have improperly lent or used the trust money in trade, the *cestuis que trust* have the option to charge the trustee either with the profits actually made or with interest at 5 per cent., that being the ordinary rate of interest paid on capital in trade. But if the trustees are authorized to invest either in the public funds *or* on real securities and they do neither, but carelessly leave the money in some other state of investment, they cannot be required to do more than replace the principal, with interest at 4 per cent., and the *cestuis que trust* have no option to charge them with the stock which might have been purchased (*g*).

Where executors neglect to convert excess of income of unconverted property beyond 3 per cent. is capital.

Where personal property is bequeathed upon trust for A. for life, with remainders over, and the trustee or executor, instead of converting the whole into 3 per cents. where he ought so to do, permits a portion to remain outstanding on an unauthorized investment, producing a large annual income which the tenant for life receives, the trustee will be compelled to account to the remainderman, not only for the principal money, but also for the excess of income paid to the tenant for life beyond the dividends which would have been received by him if the money had been invested in the 3 per cents. at the end of a year from the testator's death; in other words, the excess of income will be treated as capital (*h*). But it has been held that this principle is not to be extended to the case of a trustee

Terms, if trustees

(*g*) Robinson *v.* Robinson, 1 De G. M. & G. 257, overruling Watts *v.* Girdlestone, 6 Beav. 188; Ames *v.* Parkinson, 7 Beav. 379. See also Marsh *v.* Hunter, 6 Mad. 295; Shepherd *v.* Mouls, 4 Hare, 500; Rees *v.* Williams, 1 De G. & Sm. 314. Robinson *v.* Robinson seems, at first sight, to have been disregarded in Brown *v.* Gellatly, 2 Ch. App. 751; but this is not really so, if the decision in the latter case as to the unauthorized securities was confined to the rate of interest to be paid to the tenant for life during the *first* year from the testator's death.

(*h*) Dimes *v.* Scott, 4 Russ. 195. See also Howe *v.* Lord Dartmouth, 7 Ves. 137; Mills *v.* Mills, 7 Sim. 501.

making an unauthorized investment by which the tenant for life receives a larger income. Thus, where trustees without authority lent trust monies at interest at 5 per cent., it was held that the tenant for life was entitled to the whole interest, and that the remainderman had no right to insist that any part of such interest formed capital. The Master of the Rolls observed, that when trustees or executors commit a breach of trust by lending the money on some unauthorized investment, they have discharged their liability in favour of the *cestuis que trust* in remainder, when they have made good the capital and any increase which that capital may have received (*i*). But the distinction seems fine, and cannot, it is submitted, be confidently relied on.

make unauthorized investment.

If trustees are *authorized* to invest or change the investment with the *consent* of the tenant for life, neither party can be compelled to acquiesce in the desire of the other, but the voluntary concurrence of both parties is requisite to a valid exercise of the power (*k*). But in a case where the trustees were authorized *and required* to change the investments at the request of the tenant for life, the Court compelled the trustees to comply with the request of the tenant for life, that the existing securities should be changed (*l*).

Difference between trustees *authorized* or *required* to invest with consent.

A trustee or executor is not liable for loss arising from the failure of bankers with whom money has been deposited pending distribution or a permanent investment, unless such deposit has been made or allowed to remain without sufficient reason (*m*), and an executor placing goods in the hands of a tradesman to be disposed of in the ordinary way of business, is not liable for loss arising from such tradesman becoming bankrupt (*n*). On the other hand it would seem that a trustee is liable for a loss occasioned by the fraud of his solicitor (*o*).

Trustees not liable for failure of bankers,

or of tradesman.

Trustee liable for fraud by his solicitor.

(*i*) Stroud *v.* Gwyer, 28 Beav. 130, 141. But see Baynard *v.* Woolley, 20 Beav. 583.

(*k*) Lee *v.* Young, 2 Y. & C. 532.

(*l*) Beauclerk *v.* Ashburnham, 8 Beav. 322. And see accordingly, Cadogan *v.* Essex, 2 Drew. 227.

(*m*) Johnson *v.* Newton, 11 Hare, 160.

(*n*) Job *v.* Job, 6 Ch. D. 562.

(*o*) Bostock *v.* Floyer, L. R. 1 Eq. 26; Sutton *v.* Wilders, L. R. 12 Eq. 373.

VI. *Disclaimer.*

Disclaimer.

If a person appointed a trustee by deed or will is desirous of disclaiming the trust, and has done no act which would amount to an acceptance of it, he should execute a deed of disclaimer in proper form, bearing in mind that any form is objectionable which *affects* to convey and release property the trusts whereof he wholly disclaims (*p*).

What is acceptance of a trust.

What will amount to the acceptance of a trust must depend upon the acts or conduct of the trustee. For instance, the signature of the deed by which the trust is created, or any interference in the management of the estate under the trusts of the deed, would be regarded as an acceptance (*q*).

Probate acceptance of trust.

There can be no disclaimer of a trust which has once been accepted; and where personalty is bequeathed to executors as trustees, the probate of the will amounts to an acceptance of the trust (*r*). But, on the other hand, a renunciation of the executorship is not of itself a disclaimer of the trusts.

Revocation of one office does not revoke other.

When a person is appointed trustee and executor, and by a codicil the testator revokes the appointment of that person as executor, this does not amount to a revocation of the trusteeship (*s*).

Position of heir of surviving trustee who has not disclaimed.

The fact of a surviving trustee dying without acting under the instrument does not prevent the legal estate in the trust property from vesting in him, and devolving on his representatives, unless he actually disclaimed in his lifetime (*t*); but in a recent case, Jessel, M. R., was of opinion, though it was not necessary to decide the point, that a disclaimer might be presumed from a trustee, who was also an executor, having renounced

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(*p*) Nicolson *v.* Wordsworth, 2 Swan. 365; Urch *v.* Walker, 3 M. & Cr. 710.

(*q*) Hill on Trustees, 194.

(*r*) Mucklow *v.* Fuller, Jac. 198.

(*s*) Graham *v.* Graham, 22 L. J. Ch. 937.

(*t*) King *v.* Phillips, 22 L. J. Ch. 422.

probate and lived for three years without acting in the trusts of the real estate (*u*).

Disclaimer by parol when good.

A disclaimer of a gift or trust of copyholds may be made by parol (*x*). So also a parol disclaimer of a gift or trust of leaseholds (*y*), or of chattels personal (*z*), is good; and there are authorities in favour of the position, that a gift or trust of freeholds may be disclaimed by parol (*a*). In *Townson* v. *Tickell* (*b*), Holroyd, J., said that it seemed to him, on the reason of the thing, and the authority of *Bonifaut* v. *Greenfield*, that the disclaimer of freeholds need not be either by deed or matter of record (*c*), but it is always prudent to have a deed.

When trustee who has not acted is entitled to costs.

When the name of a party appears in an instrument as a trustee, and he is therefore made a defendant in an action, but he asserts by his answer that he had never accepted the trust or acted, he is entitled to his costs as between party and party (*cc*).

Consequences of disclaimer.

As to the consequences of a disclaimer by a trustee, Mr. Hill observes: "Where the person who is appointed trustee makes a proper disclaimer, the effect is that all parties are placed precisely in the same situation relatively to the trust property as if the disclaiming party had not been named in the trust instrument, whether it be a deed or will. Therefore where a sole trustee or all the trustees disclaim a devise in trust, the legal estate will vest in the heir of the deviser, and if the person disclaiming be one of two or more trustees, the entire estate is vested in the other trustee or trustees. Whenever the disclaimer is made it will have relation back to the time of the gift. Where one of two or more trustees disclaims, the remaining trustees or trustee will take not only the entire legal estate, but also all the powers and authorities vested in the trustees as such,

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(*u*) *Re* Gordon, 6 Ch. D. 531.

(*x*) Rex *v.* Wilson, 5 M. & R. 140.

(*y*) Smith *v.* Wheeler, 1 Ventr. 188.

(*z*) Hill on Trustees, 203.

(*a*) Bonifaut *v.* Greenfield, Cro. Eliz. 80.

(*b*) 3 B. & Ald. 39.

(*c*) See also Smyth *v.* Smyth, 6 B. & C. 112; but see *In re* Ellison's Trusts, 2 Jur. N. S. 62, in which case Sir W. P. Wood, V.-C., doubted whether a parol disclaimer by a trustee would divest an estate in freeholds out of him.

(*cc*) Heap *v.* Jones, 5 W. Rep. 106.

and which are requisite for the administration of the trust" (*d*). The disclaimer must be *absolute*, and if valid is irrevocable.

VII. *The appointment of new trustees and the powers conferred by statute for this purpose.*

Power to appoint new trustees conferred by Lord Cranworth's Act, now repealed.

Conveyancing Act, 1881, sec. 31.

It was formerly considered an essential part of a well-drawn settlement to provide for the appointment of new trustees in case of vacancies by death or otherwise. A statutory power for this purpose was given by Lord Cranworth's Act, and was very generally adopted by conveyancers, but this power has been repealed by the Conveyancing Act, 1881, which substitutes the following provisions :—

Power to appoint new trustees.

Sect. 31. (1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable as aforesaid.

Number of trustees may be increased.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

Number need not be kept up, provided there are at least two.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees

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(*d*) Hill on Trustees, 205.

were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

Trust property to be vested in new trustees.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

New trustee to succeed to all powers, &c.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

Section applies to trustee dying before testator,

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

and to trusts created either before or after Act.

Before the recent Act, one of several trustees could not retire from a trust, unless his place was supplied by the appointment of a new trustee, but is now provided as follows:—

Sect. 32.

Sect. 32. (1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the

Trustee may retire with consent of co-trustees and donee of power.

deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only and if as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Cases in which independently of Act, trustee, applying to Court to be discharged, will be allowed costs.

Independently of the above enactment, a trustee may apply to the Court to be discharged from the trust, but he will have to pay the costs of the action, unless he can show that circumstances have arisen which alter the nature of his duties (*a*). And the executor of a deceased sole trustee may decline to act, and will be entitled to the costs of any proceedings for the appointment of a new trustee (*b*).

When powers can be exercised by trustees appointed by the Court.

It was formerly held that a power given to the trustees *nominatim*, and the survivors and survivor of them, and the executors or administrators of the survivor, could not be exercised by trustees appointed by the Court (*c*). But it was otherwise if the power was conferred upon persons in their character of trustees, and thus annexed to the office (*d*). It is now, however, provided by the Conveyancing Act, 1881, as follows:—

Powers of new trustee appointed by court.

Sect. 33. (1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other Court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as

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(*a*) Forshaw *v.* Higginson, 20 Beav. 485; Gardiner *v.* Downes, 22 Beav. 395.

(*b*) Legg *v.* Mackrell, 2 D. F. & J. 551.

(*c*) Newman *v.* Warner, 1 Sim. N. S. 457.

(*d*) Byam *v.* Byam, 19 Beav. 58. See also Brassey *v.* Chalmers, 4 De G. M. & G. 528.

if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

Under recent Act defects in existing power of appointing new trustees are supplied.

It will be observed that section 31 of the Act applies to trusts created either *before* or after its commencement, and is to have effect subject to the terms expressed in the trust instrument. Whenever therefore an existing power is defective, the defect can be supplied by reference to the Act. Thus, if the power in a deed is made exerciseable by surviving or continuing trustees and not by a retiring trustee, and A. a sole surviving trustee wishes to retire, it was formerly necessary to have two appointments, viz., 1st., an appointment by A. of B. in the place of the deceased trustee; and 2ndly, an appointment by B. of C. in the place of A. But it is now unnecessary to resort to this device, as A. may under the above section, sub-section (6), appoint B. and C. at once in the place of himself and the deceased trustee. Again, if the power conferred by the deed does not enable the number of trustees to be increased or diminished, such increase or diminution may be made under sub-sections (2) and (3).

Beneficiary may be a new trustee.

A person beneficially interested, and even the tenant for life under the settlement, may be appointed a new trustee, unless the instrument shows an intention to the contrary (*q*).

Consent of assign of tenant for life to exercise by him of power to appoint new trustees not requisite, *semble*.

If a tenant for life with a power to appoint new trustees sells or mortgages his life estate, it is conceived that the consent of the vendee or mortgagee to an exercise of the power is not necessary (*r*).

Trustee becomes *unfit* by bankruptcy.

It has been held that a trustee becoming bankrupt is a person *unfit* to act (*s*), but not a person *incapable* to

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(*q*) Forster *v.* Abraham, L. R. 17 Eq. 351.

(*r*) The cases which decide that a power of sale or leasing cannot be exercised by a tenant for life without the consent of his alienee are founded on the doctrine that the donee of a power may not derogate from his own grant, *i.e.*, may not take away what he has already granted (Alexander *v.* Mills, L. R. 6 Ch. 124), and do not (it is submitted) apply to a power of appointing new trustees.

(*s*) *In re* Roche, 2 Dr. & W. 187.

act (*t*), within the meaning of a power to appoint new trustees. It follows that the statutory power, which includes the case of a trustee unfit to act, can be exercised in case of bankruptcy.

Expense of appointments.

The expense of the appointment of new trustees must generally be borne by the trust estate.

Power of Court to appoint new trustees under Trustee Act.

If the instrument contains no power to appoint new trustees in the event of death, incapacity, or otherwise, and the power conferred by the Conveyancing Act, 1881, does not apply to the instrument in question, and the concurrence of all the *cestuis que trust* cannot be obtained, the only means of procuring the appointment of a new trustee, except in cases under the Settled Land Act, 1882, is by applying to the Court under the Trustee Act, 1850 (*u*), which in effect enables the Court to appoint new trustees, whenever it is found inexpedient, difficult, or impracticable to make such appointment otherwise, and to make orders vesting any lands subject to the trust in the new trustees.

and under Settled Land Act.

As regards settled land, the Court has power to appoint trustees for the purposes of the Settled Land Act, 1882, whenever there are no such trustees, or it is otherwise expedient that new trustees should be appointed (*uu*).

VIII. *The Provisions of the Trustee Relief Acts.*

Several Acts have been passed during the present reign for the relief of trustees.

10 & 11 Vict. c. 96.

The 10 & 11 Vict. c. 96, enables trustees, executors, administrators, or other persons having trust monies in their hands, or having any stocks standing in their name in the books of the Governor and Company of the Bank of England, or any government or parliamentary securities standing in their names, or in the names of any deceased persons of whom they shall be personal representatives, to pay, transfer, or deposit the

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(*t*) Bainbrigge *v.* Blair, 1 Beav. 495.

(*u*) 13 & 14 Vict. c. 60.

(*uu*) Sect. 38.

same into or in the Court of Chancery, and thus discharge themselves from their trust (*a*).

Cases in which trustees are justified in paying money, &c. into Court.

It was formerly considered that a trustee having funds in his hands was at liberty under any circumstances to pay them into Court, under the Trustee Relief Acts, if he was so minded (*b*). This doctrine has, however, been modified by subsequent decisions, the result of which may be thus stated, *viz.*, that, where there is any *boná fide* question as to the party entitled to the fund, the trustee is not bound to take upon himself the responsibility of deciding such question, and if he pays the fund into Court will be entitled to the costs of such payment, and also to his costs of the application for obtaining it out of Court (*c*); but if a trustee pays the fund into Court, when there is no reasonable doubt as to the title of the persons claiming it, or under other circumstances which in the opinion of the Court render such a course unnecessary and vexatious, he will not only be refused his own costs of the application by the party entitled for the payment of the fund out of Court, but will also be decreed to pay the costs of the petitioner (*d*); nor will a trustee be justified in paying money into Court under the Act after notice of the intention of the *cestui que trust* to file a bill to have the accounts taken (*e*).

Where a fund was held in trust for A. for life, with remainder in trust for such person as A. should by deed or will appoint, and in default of appointment in trust for B., and after the death of A. his solicitor wrote to the trustee that there was no ground for supposing that he ever made an appointment, it was held that the trustee ought to have been satisfied with the evidence, and was not justified in paying the money into Court (*ee*).

(*a*) See also 12 & 13 Vict. c. 74.

(*b*) *In re* Croyden's Trust, 14 Jur. 54.

(*c*) *In re* Headington's Trust, 27 L. J. Ch. 175; *Re* Wylly's Trust, 28 Beav. 458; *Re* Bendyshe, 26 L. J. Ch. 814; *Re* Jones, 3 Drew. 679.

(*d*) *Re* Woodburn's Trust, 1 De G. & J. 333; *Re* Cater's Trust, 25 Beav. 361; *Re* Knight's Trust, 27 Beav. 45; see also *In re* Fagg's Trust, 19 L. J. Ch. 175; Foligno's Trust, 32 Beav. 131; Leake's Trust, *ib.* 135.

(*e*) *In re* Waring, 16 Jur. 252.

(*ee*) *Re* Cull's Trusts, 20 Eq. 561, observing on *Re* Wylly's Trusts, 28 Beav. 458.

Money given to a married woman may be paid into Court.

It has been decided that a trustee having in his hands money belonging absolutely to a married woman is not bound to pay it to her husband upon the joint request of both, but may, if he thinks fit, pay it into Court under this Act, so as to give her the opportunity of asserting her equity to a settlement (*f*).

Purchase-money may be paid into Court when trustees have no power to give discharge.

If a sale is made by trustees who have no power to give valid discharges, the difficulties arising from this imperfection of the instrument as to the payment of the purchase-money, may be removed by paying the money into Court under the provisions of this Act (*g*); and there can be no doubt that the surplus proceeds of a sale under a power in the hands of a mortgagee are held on a trust within the meaning of the statute (*h*). The owner of land charged with a legacy cannot pay the legacy into Court under this Act (*i*), but he can do so under s. 5 of the Conveyancing Act, 1881. Money payable under a policy of life assurance is not money held upon a trust (*k*), nor is money deposited with a banker (*kk*) and, consequently, in neither case can it be paid into Court under the Trustee Relief Act. But if the money is paid in, and the person claiming it petitions for its payment out, he thereby recognises the payment, and cannot object to pay the costs incidental thereto (*kk*).

The payment of a trust fund into Court does not, of course, protect the trustees from responsibility in respect of prior breaches of trust (*l*).

22 & 23 Vict. c. 35, s. 30.

By the 22 & 23 Vict. c. 35, s. 30, trustees, executors, and administrators are enabled to obtain the opinion, advice, or direction of the Court on any question respecting the management or administration of the trust property, or the assets of the testator or intestate. The practice of the Court under this Act is to advise trustees on questions relating to the management of the trust

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(*f*) *Re* Swan, 2 H. & M. 34.

(*g*) Cox *v.* Cox, 1 Kay & J. 251.

(*h*) Darling's Admin. of Trust Funds, 10.

(*i*) *In re* Buckley's Trusts, 17 Beav. 110.

(*k*) Matthew *v.* Northern Assurance Society, L. R. 9 C. D. 80.

(*kk*) *Re* Sutton's Trusts, 12 Ch. D. 175.

(*l*) Attorney-General *v.* Alford, 4 De G. M. & G. 843.

property, but not to decide questions of construction (*m*).

In cases where the trust estate does not exceed in amount or value 500*l*., all proceedings under the Trustee Relief Acts, or under the Trustee Acts, may be in the County Court under the Act 28 & 29 Vict. c. 99.

IX. *Miscellaneous points relating to trustees.*

Duty of bare trustee.

It is the duty of a bare trustee, on the request of the person who may be entitled to the entire equitable interest, to convey the legal estate to him, and such trustee would be compelled to pay the costs of any suit which might be instituted against him for this purpose in consequence of his refusal to execute such a conveyance (*n*). The equitable interest of the beneficial owner, however, must be certain, absolute, and immediate, to enable him to call for the legal estate, and if there remains in the trustee any purpose unperformed for which the legal estate is vested in him, he is entitled to refuse to execute any conveyance until those purposes are fully performed. As a trustee holds the legal estate for all persons who are interested in the equitable estate, he must be careful (in dealing with the legal estate) to regard all such interests so far as he obtains notice of the equities respectively.

Conveyance of legal estate where trustee disabled.

Where by reason of the disability of a trustee, or other circumstances, a conveyance of a legal estate outstanding in a trustee cannot be obtained, it is necessary to resort to the Chancery Division of the High Court of Justice under the Trustee Acts for a vesting order, or for an order authorizing some person to convey in the place of the trustee under disability, &c. (*o*).

(*m*) *Re* Lorenz's Settlement, 1 Drew. & Sm. 401; *In re* Mary Hooper, 29 Beav. 656.

(*n*) Willis *v.* Hiscox, 4 My. & Cr. 197; Burtinshaw *v.* Martin, 5 Jur. N. S. 647.

(*o*) By the Trustee Act, 1850, the Lord Chancellor is empowered to make such order as he may think fit for vesting and releasing lands held upon trust or by way of mortgage in the following cases:

Provisions of Trustee Act as to vesting orders.

When any lunatic or person of unsound mind is seised or possessed of lands on any trust or by way of mortgage (sect. 3), or is entitled to

If the trust estate does not exceed in amount or value 500*l.*, the application may be made to the County Court under the Act 28 & 29 Vict. c. 99, sect. 1.

any contingent right in such lands (sect. 4).

When any infant is seised or possessed of any such lands (sect. 7) (see *In re* Howard, 21 L. J. (Ch.) 437; *In re* Williams, 5 De G. & S. 515; *Ex parte* Grieve, 5 De G. & S. 436), or is entitled to any contingent right in such land (sect. 8.).

When any person solely seised or possessed of any lands upon any trust is out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 9).

When any person or persons shall be seised or possessed of any lands jointly with a person out of the jurisdiction of the Court of Chancery, or who cannot be found (sect. 10).

When any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 11).

When any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 12).

When there shall have been two or more persons jointly seised or possessed of any lands upon any trust, and it shall be uncertain which of such trustees was the survivor (sect. 13).

When any one or more person or persons shall have been seised or possessed of any lands upon any trust, and it shall not be known, as to the trustee last known to have been seised or possessed, whether he be living or dead (sect. 14).

When any person seised of any lands upon any trust shall have died intestate as to such lands without an heir, or shall have died, and it shall not be known who is his heir or devisee (sect. 15).

When any lands are subject to a contingent right in an unborn person or class of unborn persons, who upon coming into existence would in respect thereof have become seised or possessed of such lands upon any trust (sect. 16).

When any person jointly or solely entitled to lands, or to a contingent right in lands, upon any trust, shall after a demand by a person entitled to require a conveyance or assignment of such lands, or a duly authorized agent, have stated in writing that he will not convey or assign the same, or shall neglect or refuse to convey or assign such lands for twenty-eight days next after a proper deed for conveying the same shall have been tendered to him by any person entitled to require the same, or by such agent (sects. 17, 18).

The 28th sect. declares what shall be the effect of an order vesting copyholds or appointing any person to convey copyholds.

*Trustee Act Extension Act.

*And by the Trustee Act Extension Act (15 & 16 Vict. c. 55), the Chancellor is empowered to make such an order when any person shall be jointly or solely seised or possessed of any lands, or entitled to any contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right (sect. 2).

For the cases decided on the construction of the Trustee Acts, see Shelford's Real Property Statutes, pp. 605 to 635, and Morgan's Chancery Acts and Orders.

On death of a trustee, fee simple devolves on his personal representative.

It is provided by a clause in the Land Transfer Act, 1875 (*p*), that upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditament, of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real, in his legal personal representative. This clause is repealed as regards a trustee dying after the 31st December, 1881, by the Conveyancing Act, 1881 (*q*), under which last-mentioned Act an estate of inheritance or *pur auter vie* vested in a trustee passes on his death to his personal representative, whether he makes a will or dies intestate, and whether he is a bare trustee or has active duties to perform.

The above provisions obviate the necessity for an application to the Court for a vesting order where a trustee has died leaving an infant heir, in those cases to which they apply.

No forfeiture on attainder of trustee.

No lands, &c., so far as they are vested in any person upon any trust, or by way of mortgage, will escheat or be forfeited to Her Majesty, or to any corporation, lord or lady of a manor, or other person, by reason of the attainder or conviction for any offence of the trustee or mortgagee (*r*).

Presumption of re-conveyance.

The presumption of the re-conveyance of a legal estate depends on various circumstances. As between the trustee and *cestui que trust* no length of time is a ground for such presumption, but there may have been dealings on the part of the equitable owner inconsistent with the supposition of the legal estate being outstanding,—as where the property has been sold, mortgaged, and settled from time to time without any notice having been taken on such occasions of the outstanding legal estate, or where the property has been dealt with in such a manner as to lead to the inference that the legal estate must have been at the time in the beneficial owner (*s*), or where the legal estate is directed to be conveyed to a particular person at a given time (*t*), or is conveyed to trustees for

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(*p*) Sect. 48.

(*q*) Sect. 30.

(*r*) 46th sect. of Trustee Act, 1850.

(*s*) Noel *v.* Bewley, 3 Sim. 114; Emery *v.* Grocock, 6 Mad. 54.

(*t*) England *v.* Slade, 4 T. R. 682.

a particular purpose (*u*), and they are directed to convey to the *cestui que trust* when those purposes are satisfied, and a long time has elapsed since the trustees *ought* to have conveyed the legal estate pursuant to such direction, &c., &c.,—and in such cases it will have to be considered whether there is sufficient ground for such presumption (*x*). It is said that if before a jury it would be the duty of a judge to give a clear direction in favour of the fact of conveyance, then it is to be considered as without reasonable doubt; but if it would be the duty of a judge to leave it to the jury to pronounce upon the effect of the evidence, then it is too doubtful to conclude a purchaser (*y*). In *Cotterell* v. *Hughes* (*z*), a term was assigned to attend the inheritance in 1773. In 1778 the estate was limited in strict settlement, and in 1813 the estate was again limited in strict settlement, but in neither of these settlements was any notice taken of the outstanding term. In 1840 the estate was sold, and on this occasion the term was assigned to attend the inheritance for the purchaser, and it was held that the circumstances of the omission of all mention of this term in the two settlements would not justify the Court in presuming a surrender.

The presumption of the surrender of a term which is not stated as a fact in the special case, must be made by a jury and not by the Court (*a*).

Right to the possession of title deeds.

The right to the possession of the title deeds depends on the situation of the legal estate, and follows the legal ownership; and this rule is equally applicable to personal and real estate. If, therefore, the legal interest in an estate under a settlement is vested in trustees in trust to pay the rents and profits to a tenant for life, and after his death in trust for other persons, they are, as a general rule, entitled to retain the custody of the deeds (*b*). The

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(*u*) Hillary *v.* Waller, 12 Ves. 239.

(*x*) Hill's Tr. 236; Matthias *v.* Evans, 29 L. T. 226.

(*y*) Emery *v.* Grocock, *ubi suprà;* Sug. V. & P., 13th ed., 331.

(*z*) 15 C. B. 532.

(*a*) Cotterell *v.* Hughes, *ubi suprà.*

(*b*) Garner *v.* Hannyngton, 22 Beav. 630. But see Lady Langdale *v.* Briggs, 8 De G. M. & G. 416, where the Court directed the deeds to be given into the possession of a tenant for life of bequeathed leaseholds, upon his giving reasonable security for protecting the interests *cestui que trust*, however, has a right to inspect and take copies of the deeds at any time (*c*). But the tenant for life has a right to the custody of the deeds, if the legal as well as the equitable estate is vested in him (*d*), unless he has been guilty of misconduct so that the safety of the deeds is endangered, or there is a pending suit relating to the property, and it is more convenient for the purposes of the suit that they shall be in Court (*e*). Any person entitled to a *vested* remainder may require the tenant for life to produce the title deeds for the remainderman's inspection, in order to enable him to dispose of, or otherwise deal with, the property (*f*). But it seems that this right does not extend to a person entitled to a contingent remainder (*g*).

The trustee of a bare legal estate will be compelled in equity to deliver the custody of the title deeds to his *cestui que trust* (*h*).

Renewal of lease by trustee, or tenant for life.

If a trustee, and for this purpose the tenant for life of a settled leasehold property is considered a trustee (*hh*), renews a lease, the renewed lease will enure for the benefit of the trust (*i*), and it makes no difference that the lease has not usually been renewed (*k*), or that the old lease had expired (*l*), or that the renewal was for a different term or at a different rate, and the rule has been held to apply where the tenant for life of an underlease purchased the leasehold reversion and then took a renewal from the superior lessor (*m*).

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of the persons entitled in remainder, although the executor opposed the application.

(*c*) *Ex parte* Holsworth, 4 Bing. N. C. 386; 7 L. J. (N. S.) C. P. 225.

(*d*) See Doe *v.* Passingham, 6 B. & C. 305; Barclay *v.* Collett, 4 Bing. N. C. 669; 7 L. J. (N. S.) C. P. 235; Bowles *v.* Stewart, 1 Sch. & Lef. 223; Garner *v.* Hannyngton, *ubi suprà.*

(*e*) Ivie *v.* Ivie, 1 Atk. 429; Warren *v.* Rudall, 1 J. & H. 1; Leathes *v.* Leathes, 5 Ch. D. 221; Stamford *v.* Roberts, L. R. 6 Ch. 307.

(*f*) Davis *v.* Earl of Dysart, 20 Beav. 405; Pennell *v.* Earl of Dysart, 27 Beav. 542.

(*g*) Noel *v.* Ward, 1 Mad. 322; Ivie *v.* Ivie, 1 Atk. 429.

(*h*) Hill's Tr. 259.

(*hh*) Taster *v.* Marriott, Amb. 668; Rawe *v.* Chichester, *ib.* 715.

(*i*) Edwards *v.* Lewis, 3 Atk. 538.

(*k*) Killick *v.* Flexney, 4 B. C. C. 161.

(*l*) Edwards *v.* Lewis, *ubi suprà*; James *v.* Dean, 11 Ves. 383.

(*m*) Giddings *v.* Giddings, 3 Russ. 241.

Trustee cannot charge for professional services.

It is an established rule that a trustee, executor, or administrator shall have no allowance for his care and trouble (*n*), and consequently a trustee who is a solicitor is only entitled to be repaid costs out of pocket, and cannot charge the trust estate for his professional services (*o*). The rule equally applies where the trustee is a member of a firm of solicitors, and the business is done by the firm (*p*). In a case where one of a firm of solicitors acted in the defence of a suit for himself and his co-trustees, it was held that the trustees, as a body, were entitled to their full costs, unless it could be shown that the amount of such costs was increased by the solicitor being joined in the defence with the other trustees (*q*). But the exception to the general rule allowed in the last named case will not be extended to the administration of an estate out of Court (*r*).

Mortgagee in possession is a trustee.

A mortgagee in possession is not entitled to charge any commission for receiving the rents (*rr*), nor can a mortgagee selling under a power of sale charge for his trouble in connection with the sale (*s*). Whether a solicitor mortgagee who acts for himself in a redemption suit is entitled to costs beyond those out of pocket, seems doubtful (*t*).

Rule not confined to solicitors.

The rule is not confined to solicitors. Thus, in a case where a mortgagee with a power of sale was a member of a firm of auctioneers, and the firm sold for him under the power, it was held the firm were not entitled to the auctioneer's commission (*u*).

Effect of clause authorizing trustee to charge for professional services.

If the settlor or testator expressly authorizes the trustee to retain his professional costs, he will be allowed to charge for everything which, if he had not been a

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(*n*) Robinson *v.* Pett, 3 P. Wms. 248.

(*o*) Moore *v.* Frowd, 3 M. & C. 45; Pollard *v.* Doyle, 1 Drew. & Sm. 319.

(*p*) Christophers *v.* White, 10 Beav. 523; Lincoln *v.* Windsor, 9 Hare, 158; Broughton *v.* Broughton, 2 Sm. & Gif. 422; S. C. 5 De G. M. & G. 160.

(*q*) Cradock *v.* Piper, 1 Mac. & G. 664.

(*r*) Lincoln *v.* Windsor, *ubi suprà*.

(*rr*) Bonithon *v.* Hockmore, Vern. 315.

(*s*) Matthison *v.* Clarke, 3 Drew. 3.

(*t*) See Price *v.* M'Beth, 33 L. J. Ch. 460; Sclater *v.* Cottam, 29 L. T. 309.

(*u*) Matthison *v.* Clarke, 3 Drew. 3; see Douglas *v.* Archbutt, 2 De G. & J. 148.

trustee, he would have been justified in employing a solicitor to do; but he will not be allowed his charges for things which an executor or trustee ought to do without the intervention of a solicitor, such as for attendances to pay premiums on policies, attendances at the Bank to make transfers, attendances on proctors, auctioneers, legatees, and creditors (*x*).

(*x*) Harbin *v.* Darby, 28 Beav. 325.

HUSBAND AND WIFE (*a*).

It is proposed in this Dissertation to consider—I. The right of separate property conferred on the wife by the Married Women's Property Acts, and the interest of the husband in his wife's real estate, chattels real, chattels personal, choses in action, and reversionary interests in personalty not being her separate property by virtue of those Acts or otherwise. II. The wife's equity to a settlement out of property accruing to her after the marriage and not subject to the above-mentioned Acts. III. Trusts for the separate use of a married woman, either with or without a restraint on anticipation. IV. The liability of the wife's separate property, and of the husband, for the wife's debts and engagements contracted during the coverture and before marriage respectively. V. The effect of separation or desertion as to the wife's property and her capacity to contract.

I. The right of separate property conferred on the wife by the Married Women's Property Acts, and the interest of the husband in his wife's real estate, chattels real, chattels personal, choses in action, and reversionary interests in personalty not being her separate property by virtue of those Acts or otherwise.

The law relating to the property of married women has been materially altered (1) by the Married Women's Property Act, 1870 (*b*), which came into operation on the 9th August, 1870, and (2) by the Married Women's

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(*a*) This subject has been to some extent anticipated in the 1st vol., as to the disabilities of married women in reference to the sale of land and as to dower.

(*b*) 33 & 34 Vict. c. 93.

Property Act, 1882 (*c*), which came into operation on the 1st January, 1883, and which repeals the Act of 1870, except as regards acts done and rights acquired under it while in force.

Effect of Acts.

The effect of these enactments may be thus stated:

Woman married since 1882 entitled to all her property for her separate use.

1. Every woman who has married since the 31st December, 1882, is entitled to hold as her separate property, and to dispose of by will or otherwise, all real and personal property belonging to her at the time of the marriage or acquired by or devolving on her afterwards (*d*).

Woman married before 1st January, 1883, entitled for her separate use to property accruing in title after 1882.

2. Every woman who has married before the 1st January, 1883, is entitled to hold as separate property, and to dispose of by will or otherwise, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion or remainder, accrues after the above date (*e*).

Woman married since 9th August, 1870, entitled for her separate use to certain kinds of property.

3. Every woman who has married between the 9th August, 1870, and the 31st December, 1883 (inclusive), is entitled to hold as her separate property and to dispose of (1) any personal property which has come to her, since the marriage, as next of kin or one of the next of kin of an intestate; (2) any sum of money not exceeding £200 which has come to her since the marriage under any deed or will, and (3) the rents and profits of any freehold, copyhold, or customaryhold property which has descended upon her since the marriage as heiress or co-heiress of an intestate (*f*).

Married woman entitled to wages and earnings in separate employment since 8th August, 1870.

4. A married woman, whatever may be the date of her marriage, is entitled for her separate use to any wages and earnings acquired or gained by her since the 8th August, 1870, in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, and any money or property acquired by her by the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, moneys, or property (*g*).

Wife authorized by Act of 1870 to acquire

5. By the Act of 1870, a married woman, or any woman about to be married, was enabled by taking the

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(*c*) 45 & 46 Vict. c. 75.

(*d*) Sec. 2 (1882).

(*e*) Sec. 5 (1882).

(*f*) Sec. 7, 8 (1870).

(*g*) Sec. 2 (1870); secs. 2, 5 (1882).

separate interest in certain kinds of property.

steps prescribed for that purpose, to acquire a separate property in, (1) any sum forming part of the public stocks or funds, and not being less than £20, (2) fully paid-up shares, or debentures, or debenture stock, or any stock to the holding of which no liability was attached, in any incorporated or joint stock company, and (3) shares, debentures or any other interests in any industrial, provident, friendly, benefit, building, or loan society duly registered (*h*).

Deposits in banks, stock in the funds, &c., in name of wife on 1st January, 1883, to be deemed her separate property.

6. All deposits in any post office or other savings bank or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt, or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England, or of any other bank, which on the 1st January, 1883, were standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which on that day were standing in her name, are to be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, &c., was standing in the sole name of a married woman, is sufficient *primâ facie* evidence that she was beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband (*i*).

Stock, &c., hereafter transferred, &c., to a married woman to be for her separate use.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the preceding paragraph, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which on or after the 1st January, 1883, are allotted to or placed, registered, or transferred in or into

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(*h*) Sec. 5 (1870).

(*i*) Sec. 6 (1882).

or made to stand in the sole name of any married woman are to be deemed, unless and until the contrary be shown, to be her separate property. But a corporation or joint stock company will not be required to admit any married woman to be a holder of any shares or stock therein to which any liability is incident, contrary to the provisions of any Act of Parliament, charter, byelaw, articles of association, or deed of settlement regulating such corporation or company (*k*).

Stock, &c., standing in joint names of wife and another.

8. The above provisions extend and apply, so far as relates to the interest of the married woman, to any of the particulars aforesaid which on the 1st January, 1883, were or at any time afterwards shall be standing in, or made to stand in, the name of any married woman jointly with any persons or person other than her husband (*l*).

Husband need not join in transfers.

9. The wife may transfer any of the above particulars without her husband's concurrence; and if she makes any fraudulent investment in her own name with her money, he may apply to the Court for relief (*m*).

It appears from what has been above stated, that when the marriage has taken place since the 31st December, 1882, or where the marriage having taken place on or before that day, the wife has acquired property afterwards, the marital right during coverture is altogether excluded. But after the coverture, if the husband survives his wife, his right in respect of any property which she may leave and as to which she dies intestate, will be the same as under the old law. Thus he will be entitled to curtesy in her freehold lands of inheritance, when there has been issue of the marriage (*n*), and on taking out administration, will be entitled to her personal estate. As regards property not within the Act of 1882, the former law is still in operation, subject to the exceptions introduced by the Act of 1870. It therefore remains to consider what interest a husband takes in his wife's property subject to the old law.

Husband surviving wife entitled to curtesy in land of inheritance and to administration, if she dies intestate.

Right of husband married before 1883 in wife's property not within Acts.

Freeholds and copyholds.

I. As regards freehold and copyhold property the husband is entitled to the rents and profits during the joint lives. He is also entitled, if he survives his wife,

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(*k*) Sec. 7.

(*l*) Sec. 9.

(*m*) Sec. 10.

(*n*) Cooper *v.* Macdonald, 7 Ch. D. 289.

and there has been issue born alive of the marriage, to an estate during his life, called an estate by the curtesy, in any freehold property to which the wife was entitled in possession at any time during the coverture, for an estate of inheritance descendible to such issue.

On what property curtesy attaches.

The following points with respect to curtesy are settled by authority, viz., (1.) Curtesy attaches to an undivided share of land held in coparcenery, or in common, but not to land held in joint tenancy, nor to a reversion or remainder, which does not fall into possession during the coverture (*c*). (2.) Where contingent remainders intervene between a limitation to a wife for life and a reversion in her in fee, the right of curtesy exists until the contingency happens (*d*). (3.) Curtesy attaches to an equity of redemption (*e*), and to money directed to be laid out in land (*f*), and to a trust estate (*g*). (4.) Curtesy attaches to land belonging to the wife for her separate use, if and so far as it is not disposed of by the wife in her lifetime or by her will (*h*). (5.) Curtesy attaches to land of which the wife is tenant in tail, provided that a child is born capable of taking under the entail, although the wife may eventually die without issue, and to land in which the wife has an estate of inheritance subject to an executory limitation over, provided that a child is born, and the wife's estate is such as, notwithstanding the executory limitation, might have descended to such child. Thus, in a case where an estate was devised to a woman in fee, with an executory limitation over in case she should die under twenty-one and without leaving issue; the devisee had a child, the child died, and then the mother died under twenty-one, and it was held that the husband was tenant by the curtesy (*i*). But where there was a devise to A. in fee, and if she died leaving issue, then to such issue; it was held that as the issue took as purchasers, and could not have taken by descent, there was no curtesy (*j*).

(*c*) Co. Litt. 29.

(*d*) Boothby *v.* Vernon, 9 Mod. 147.

(*e*) Casborne *v.* Scarfe, 1 Atk. 603.

(*f*) Cunningham *v.* Moody, 1 Ves. Sen. 174.

(*g*) Watts *v.* Ball, 1 P. Wms. 108.

(*h*) Cooper *v.* Macdonald, 7 Ch. D. 289, and cases there cited.

(*i*) Buckworth *v.* Thirkell, 3 Bos. & Pull. 652, note; see also Moody *v.* King, 2 Bing. 447.

(*j*) Barker *v.* Barker, 2 Sim. 249; see also Sumner *v.* Partridge, 2 Atk. 47.

There is no curtesy in copyholds except by special custom (*k*).

Husband's interest in chattels real of wife.

(2.) With respect to the chattels real of a woman married before the 1st January, 1883, not being her separate property under the above-mentioned Acts or otherwise, the husband is entitled to the rents and profits during the joint lives, and he has an absolute power of disposing of them either voluntarily or for a valuable consideration, by act *inter vivos*, and this power extends to reversionary and contingent interests, unless the interest is of such a nature that it cannot by possibility vest in the wife in possession during the coverture (*l*); but so far as this power is not exercised by a complete act during the coverture, they go to the survivor without administration.

Chattels personal.

The chattels personal of a wife married before the above date (not being her separate property under the Acts or otherwise) belong absolutely to the husband, so far as he obtains possession of them during the coverture. The wife's paraphernalia, viz., her wearing apparel, and ornaments suitable to her condition in life, are a partial exception to this rule. These pass to the wife if she survives, but she cannot give them away in her lifetime. The husband may dispose of them (except wearing apparel) by an act *inter vivos*, but not by will, and they are subject to his debts (*m*).

Choses in action.

With respect to the *choses in action* of a wife married before the above date (not being her separate property under the above-mentioned Acts or otherwise)—which term comprises debts owing to her, arrears of rent, legacies, reversionary interests in personal estate, and other property recoverable by action or suit—the husband acquires an absolute interest in the same, so far as they are reduced by him into possession during the coverture, but not otherwise; and an assignment for a valuable consideration of the wife's choses in action by the husband is void against the wife surviving, if the husband die before he or the assignee has reduced them into possession, although

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(*k*) Gilb. Ten. 288.

(*l*) Duberley *v.* Day, 16 Beav. 33.

(*m*) 2 Step. Com. 287.

they could have been immediately reduced into possession, but from neglect or other causes have been left outstanding (*n*).

What amounts to a reduction into possession.

A chose in action is considered to be reduced into possession by the husband when he receives a sum owing to his wife, or when a fund is transferred into his name, or when a fund or money belonging to the wife is transferred into the name of, or paid to, a third party at the request of the husband (*o*).

Where money is paid to the wife or her agent, it will be considered as reduced into possession, and becomes at once the husband's property (*p*); but where money was paid into the hands of a third party, to be appropriated to the use of a married woman, and he wrote to her informing her that he had it at her disposal, this was not considered a reduction into possession (*q*).

Effect of judgment at law or decree in equity.

If the chose in action is recoverable at law, and the husband obtains judgment, but dies before execution, it has been held that the debt goes to the wife, and not to the husband's executor (*r*). On the other hand it was decided in two early cases that the order or decree of a court of equity for *payment* of a fund to the husband was a reduction into possession (*s*). The ground of these decisions appears to have been that a decree in equity was distinguishable from a judgment at law, because in the case of a judgment an ulterior step has to be taken by the party recovering to make it operate upon the thing recovered (*t*).

What is not a reduction into possession.

The receipt by the husband of interest on his wife's mortgage debts or other choses in action does not constitute a reduction into possession of the principal (*u*). Again, a payment of the fund into Court by the trustee

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(*n*) Ellison *v.* Elwin, 13 Sim. 309; Ashby *v.* Ashby, 1 Coll. 553; Hutchings *v.* Smith, 9 Sim. 137; Michelmore *v.* Mudge, 2 Gif. 183.

(*o*) See Hansen *v.* Miller, 14 Sim. 22; Allday *v.* Fletcher, 1 De G. & J. 82; Hamilton *v.* Mills, 29 Beav. 193.

(*p*) Carne *v.* Brice, 7 M. & W. 183; Molony *v.* Kennedy, 10 Sim. 254.

(*q*) Fleet *v.* Perrins, L. R. 4 Q. B. 500.

(*r*) Bond *v.* Simmons, 3 Atk. 20.

(*s*) Heygate *v.* Annesley, 3 Bro. C. C. 362; Forbes *v.* Phipps, 1 Eden, 502.

(*t*) Note to Forbes *v.* Phipps, 1 Eden, 508.

(*u*) Michelmore *v.* Mudge, 2 Giff. 183; *Ex parte* Norton, 8 De G. M. & G. 258.

is not of itself a reduction into possession (*v*), nor a transfer by executors of a fund belonging to a married woman into the names of other trustees for her benefit (*w*), nor a transfer of the fund into the wife's name (*x*), or into the joint names of husband and wife (*y*). In a case where the husband was executor and trustee, it was held that his possession in that character was not a reduction into possession of the wife's share of the residue so as to entitle his executor to it, as against the wife surviving (*z*).

Where the chose in action cannot fall into possession during the husband's life, it is impossible for him to assign it as against his wife surviving.

In what cases a husband can release choses in action of wife.

If the chose in action is immediately recoverable *at law*, it may be released by the husband.

Where a husband agreed with the executor that a legacy given to his wife should be set off against a sum of the same amount owing from him to the testator on his promissory note, and the husband and wife signed a *receipt* for the legacy, but it did not appear that the promissory note was given up, it was held that, the wife having survived, was entitled to the legacy, no *release* having been given for it by the husband (*b*). But in a case where a married woman was entitled to a sum of money owing to her on a promissory note, and the husband agreed with the debtor that the promissory note should be cancelled, and that in consideration thereof the debtor should give his bond for the same amount to trustees nominated by the husband upon the trusts of a post-nuptial settlement, and the debtor gave such bond accordingly, it was held that this transaction amounted to a reduction into possession, and that the right of the wife by survivorship was effectually barred (*c*).

(*v*) Macaulay *v.* Philips, 4 Ves. 15.

(*w*) Ryland *v.* Smith, 1 My. & Cr. 53; see also Rawlins *v.* Birkett, 25 L. J. Ch. 837; Topham *v.* Morecraft, 4 Jur. N. S. 611; Wall *v.* Tomlinson, 16 Ves. 413; Bourton *v.* Williams, L. R. 5 Ch. App. 655.

(*x*) Wildman *v.* Wildman, 9 Ves. 174.

(*y*) Prole *v.* Soady, L. R. 3 Ch. App. 220; Nicholson *v.* Drury, &c. Compy., 7 C. D. 48.

(*z*) Baker *v.* Hall, 12 Ves. 497.

(*b*) Harrison *v.* Andrews, 13 Sim. 595.

(*c*) Burnham *v.* Bennett, 2 Coll. C. C. 254.

Reversionary interest of wife cannot be reduced into possession by release of prior interest.

So long as the interest of a wife in personal property is of a reversionary nature, it is incapable of being reduced into possession, and therefore cannot be affected by any act of the husband so as to bind the wife surviving; and where a wife has a present life interest in a fund, that portion of the life interest which will remain to her after her husband's death, if she survives him, is reversionary within the meaning of the rule, and cannot be disposed of by the husband (*d*). It has been sometimes attempted to evade this rule and to bring the reversionary interest of the wife into the possession and control of the husband by obtaining a surrender or release of the prior interest; but it has been held that such a scheme is ineffectual. Thus, where a fund in Court was subject to a trust for a husband for life, remainder to his wife for life, remainder to their son absolutely. The husband and son by deed surrendered and released their respective interests to the wife for the purpose of giving her a present absolute interest in the fund; a petition by the three for payment of the fund to the son was refused on the ground that a court of equity will not establish an equitable merger by analogy to law, where the effect would be to defeat its own rules and practice in the protection of married women from the marital control (*e*).

But may be disposed of except in certain cases by husband and wife together by deed acknowledged by latter.

But the husband and wife may together, by a deed acknowledged by the latter, dispose of a reversionary interest in money charged on land (*f*), and also of a reversionary interest in any personal estate to which the wife has become entitled under any instrument made after the 31st of December, 1857 (except such interest in personal estate as may have been settled on her by any settlement, or agreement for a settlement, made on the occasion of her marriage, and except also any interest which by the terms of the instrument she is restrained from alienating), and may also release or extinguish any power vested in her in regard to any such personal estate (*g*).

(*d*) Stiffe *v.* Everitt, 1 My. & Cr. 37; see also Bolito *v.* Kinniar, 11 Jur. N. S. 556.

(*e*) Whittle *v.* Henning, 2 Ph. 731.

(*f*) 3 & 4 Wm. 4, c. 74.

(*g*) 20 & 21 Vict. c. 57.

II. *The wife's equity to a settlement in respect of property accruing to her during the coverture not subject to the above-mentioned Acts.*

Equity to a settlement, what it is.

The choses in action of the wife, not being her separate property under the above-mentioned Acts or otherwise, may be paid or transferred to the husband, or to his assignee, or to trustees for his benefit (*z*), by the person in whose hands or name they are, at any time before proceedings have been instituted for a settlement; and if the chose in action is immediately recoverable at law, the Court will not prevent the husband from recovering it accordingly; but where the husband has a title in equity only, the Court will in general oblige him to make a reasonable provision thereout for his wife and children (*a*). This right of the wife is called "her equity to a settlement."

Wife's equity to a settlement

Amount to be settled depends upon circumstances.

The general rule is to settle one-half on the wife, and to pay the other half to the husband or his assignees; but the Court, in determining what will be a reasonable provision, will be guided in each case by all the circumstances, such as the amount of the fund, the provision that may have been already made upon the wife, the amount of property of the wife of which her husband may have previously possessed himself, the means which may be available for her support, &c., &c. Thus, in several cases where the fund was small, and the wife and children had no other means of support, the Court has settled the whole fund (*b*). And in other cases, where ample provision has been already made for the wife and children, the Court has declined to order any settlement (*c*).

(*z*) Hansen *v.* Miller, 8 Jur. 209.

(*a*) Elibank *v.* Montolieu, 5 Ves. 737; Vaughan *v.* Buck, 1 Sim. N. S. 284.

(*b*) *In re* Cutler, 14 Beav. 220; *In re* Kincaid, 1 Drew. 326; Gent *v.* Harris, 10 Hare, 383; Duncombe *v.* Greenacre, 29 Beav. 578; see also Coster *v.* Coster, 9 Sim. 602; Green *v.* Otte, 1 S. & St. 250; Gardner *v.* Marshall, 14 Sim. 575; Bagshaw *v.* Winter, 5 De G. & Sm. 466; Scott *v.* Spashett, 21 L. J. Ch. 349; *Re* Erskine's Trust, 1 K. & J. 302; Ward *v.* Yates, 1 D. & S. 80; Chapman *v.* Lamport, 8 W. R. 466; Smith *v.* Smith, 3 Gif. 121.

(*c*) Aguilar *v.* Aguilar, 5 Madd.

Release of equity to a settlement.

The wife is able, however, to waive her right to a settlement on examination in Court at any time before a settlement (although it may have been previously claimed by her (*d*)) is actually executed, but not so as to affect any interest which the children may have previously acquired under agreement (*e*). And now, under 20 & 21 Vict. c. 57, she is able by deed acknowledged under the Fines and Recoveries Act, with the concurrence of her husband to release or extinguish her right or equity to a settlement out of any personal estate to which she, or her husband in her right, may be entitled in possession under any instrument made after the 31st of December, 1857. It will be remarked that the Act makes no provision for enabling the wife to release her equity to a settlement out of personal estate derived under an *intestacy.*

Except in cases coming within the operation of the last-mentioned Act, the wife cannot deprive herself of her equity to a settlement otherwise than by examination in Court. Hence, a trustee having in his hands money belonging absolutely to a married woman, although he may safely pay it to the husband, is not bound to do so even at the wife's request, but may pay it into Court under the Trustee Relief Act, so as to enable the wife to assert her equity to a settlement (*f*).

Equity to a settlement does not attach to a reversionary interest.

The wife's equity to a settlement is an obligation fastened by the Court not upon the property, but on the right to receive it, and it is only when the property comes to be payable or transferable, that the obligation will be enforced. A settlement, therefore, cannot be claimed in respect of a reversionary interest so long as it remains reversionary (*g*).

Wife's right to a settlement notwithstanding she may be living separate.

The wife is entitled to this equity to a settlement, although she may be living separate from her husband (*h*).

414; Spicer *v.* Spicer, 24 Beav. 365; *Re* Erskine's Trust, 1 K. & J. 302.

(*d*) Baldwin *v.* Baldwin, 5 De G. & Sm. 319.

(*e*) *Ex parte* Gardner, 2 Ves. Sen. 671.

(*f*) *Re* Swan, 2 H. & M. 34.

(*g*) Osborn *v.* Morgan, 9 Hare, 432; Adams *v.* Bennett, 23 L. T. 183.

(*h*) Eedes *v.* Eedes, 11 Sim. 569.

Again, this equity to a settlement exists as against her husband's assignees for a valuable consideration, and all other assignees, and also as against his creditors (*i*).

Equity, how far it attaches to life interests.

The wife has also an equity to a settlement in respect of her life interest in all her equitable property, whether it be freehold, or chattel real or personalty of any other description, as against the assignees in bankruptcy of the husband (*k*), or as against the husband himself, in the event of her being deserted by him (*l*), but no such equity exists as against particular assignees for value of such life interest (*m*).

Settlement made by husband in consideration of wife's fortune, bars her right.

If, previously to marriage, the husband makes a settlement on his wife in consideration of her fortune, he would be entitled to the absolute possession of the equitable personalty of which she was then possessed (*n*). And if the settlement is made in consideration of the future as well as the present fortune of the wife, the title of the husband in respect of all her property would be good as against the wife's right to a settlement (*o*). It is to be observed, however, that although such a purchase by the husband may entitle him to call for the whole of his wife's property, he must do so during the coverture, for if he should die in the lifetime of his wife without having reduced it into possession, it will survive to the wife (*p*).

Cannot be enforced by children.

If the wife dies before the husband, her children cannot enforce an equity for a settlement after her death, unless a decree for this purpose has been made in her lifetime (*q*). And this is the case even if the wife commences an action in her lifetime, but dies before a decree (*r*).

(*i*) Johnson *v.* Johnson, 1 Jac. & W. 476; Scott *v.* Spashett, 3 Mac. & Gor. 599; Marshall *v.* Fowler, 16 Beav. 249.

(*k*) Lumb *v.* Milnes, 5 Ves. 517; Sturgis *v.* Champneys, 5 M. & C. 97; Barnes *v.* Robinson, 9 Jur. N. S. 245.

(*l*) Gilchrist *v.* Cator, 1 De G. & Sm. 188; *In re* Ford, 33 L. J. Ch. 180; Gleaves *v.* Prime, 11 W. Rep. 273.

(*m*) Tidd *v.* Lister, 10 Hare, 140; Elliot *v.* Cordell, 5 Madd. 149; *Re* Carr's Trust, L. R. 12 Eq. 609.

(*n*) Druce *v.* Denison, 6 Ves. 395.

(*o*) Garforth *v.* Bradley, 2 Ves. Sen. 675.

(*p*) Hill's Trustees, 411.

(*q*) Scriven *v.* Tapley, 2 Ed. 337; Murray *v.* Lord Elibank, 10 Ves. 84; De la Garde *v.* Lempriere, 6 Beav. 344.

(*r*) Wallace *v.* Auldjo, 2 Drew. & Sm. 216; 1 De G. J. & S. 643.

The proper form of a settlement is for the wife for life with remainder to such of her children, by her present or any future husband, as shall attain 21, or being daughters marry, with usual clauses, and if no child, for the husband (*s*).

III. *Trusts for the separate use of a married woman, either with or without a restraint on anticipation.*

What was necessary before recent Act to constitute a trust for separate use.

Independently of the Married Women's Property Acts, equity has always recognized the right of a married woman to the separate enjoyment of property, where it has been given upon a trust for her separate use, or where the language of the instrument of gift has shown the intention of the donor to be that she shall enjoy it independently of her husband. Thus, a bequest of stock to trustees in trust to permit a married woman to receive the income "independent of her husband" (*t*); a bequest of residue to a married woman and her unmarried daughter in equal shares for their own use and benefit, "independently of any other person" (*u*); a bequest to trustees in trust to pay the income to a married woman, for life, "her receipt to be a sufficient discharge" (*x*); a bequest of bonds and mortgages to a married woman, with a direction that they should be delivered up to her "whenever she should demand or require the same" (*y*); and a bequest to a husband "for the livelihood of his wife" (*z*), have been held to confer a separate estate.

Cases where gift has been held to confer separate estate.

Cases where the contrary has been held.

But a direction to pay the capital or income to a wife "into her own proper hands for her own use and benefit" (*a*), or "to her own use and benefit" (*b*), or to

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(*s*) Spirett *v.* Willows, L. R. 1 Ch. 520; Suggitt's Trust, *ib.* 3 Ch. 215; Croxton *v.* May, *ib.* 9 Eq. 404; Walsh *v.* Wason, *ib.* 8 Ch. 482.

(*t*) Wagstaff *v.* Smith, 9 Ves. 520.

(*u*) Margetts *v.* Barringer, 7 Sim. 482.

(*x*) Lee *v.* Prieaux, 3 B. C. C. 381.

(*y*) Dixon *v.* Olmius, 2 Cox, 414.

(*z*) Darley *v.* Darley, 3 Atk. 399.

(*a*) Tyler *v.* Lake, 2 Russ. & My. 183; Blacklow *v.* Laws, 2 Hare, 49.

(*b*) Johnes *v.* Lockhart, cited 3 Bro. C. C. 385 n.

her absolute use (*c*), or the words, "to be under her sole control" (*d*), or a bequest to a female and her assigns for her life for her and their own absolute use and benefit (*e*) have been held insufficient to create a trust for a wife's separate use. And in a case, where a testator devised lands to his wife "for her sole use and benefit" without the intervention of a trustee, it was held that she did not take a separate estate (*f*). This case has been followed by the House of Lords (*g*), and it may now be considered settled that the word "sole" has not acquired a technical meaning, and will not be construed as equivalent to "separate," unless the context shows such to have been the intention (*h*).

Where a legacy was bequeathed to trustees for the support and maintenance of the wife of A., and for the support and education of A.'s children, and there were no children of A. at the testator's death, it was held that the wife took the legacy for her separate use (*i*). And where a legacy was by will directed to be applied to the separate use of a wife, a further annuity, which was given to her by codicil in addition, was held to be for her separate use (*k*).

A direction by will to purchase an annuity for the wife in her name, and to pay the same to her and her assigns, does not, except under the recent Act, confer upon her a separate estate in the annuity (*l*).

So also a settlement of personalty on the wife for life for her separate use, with remainders over, with the ultimate remainder to her executors, administrators, and assigns, does not, except under the recent Act, create a trust for her separate use as to the ultimate remainder (*m*).

(*c*) *Ex parte* Abbott, 1 Deac. 338.

(*d*) Massey *v.* Parker, 2 M. & K. 174.

(*e*) Rycroft *v.* Christie, 3 Beav. 238.

(*f*) Gilbert *v.* Lewis, 1 De G. J. & S. 38. Westbury, L. C., in giving judgment, referred to Adamson *v.* Armitage, as a case of doubtful authority, and to Cox *v.* Lyne as very erroneously reported. See also Lewis *v.* Matthews, 2 L. R. Eq. 177.

(*g*) Massy *v.* Room, L. R. 4 H. L. 288.

(*h*) *Re* Tarsey's Trust, L. R. 1 Eq. 561.

(*i*) Cape *v.* Cape, 2 Y. & C. Eq. Exch. 543.

(*k*) Day *v.* Croft, 4 Beav. 561.

(*l*) Dakins *v.* Beresford, 1 Cha. Ca. 194.

(*m*) D'Arcy *v.* Crofts, 9 Ir. Ch. Rep. 19.

Separate estate may be disposed of by wife.

Independently of the Married Women's Property Act, 1882, all property, whether real or personal, held in trust for the separate use of a married woman, whether for an estate in fee simple (*n*), or for any other estate or interest (*o*), can be disposed of by her independently of her husband, in all respects as if she were a *feme sole*, and the deed of disposition need not be acknowledged.

If legal estate in land given to separate use of wife is vested in her, she can convey under Vendor and Purchaser Act, *semble*.

If in a case not within the Act of 1882, land has been given to a married woman in fee simple for her separate use so that she has the legal estate as well as the equitable separate estate, it is apprehended that upon a sale or mortgage she will be able, under sect. 6 of the Vendor and Purchaser Act, 1874, to convey the legal estate to the purchaser or mortgagee by an unacknowledged deed. The contract and payment of the consideration money will constitute her a bare trustee for the purchaser or mortgagee, and thus bring her within the operation of the section.

Restraint on anticipation.

A trust of the rents or income of real or personal property for the separate use of a married woman, has been usually accompanied by a clause in the nature of a restraint on anticipation, in which case her power is restricted to that of receiving the income as it becomes due, and she is absolutely incompetent to make any disposition of the rents or income before they accrue due, and until lately she could not give a valid power of attorney to receive them (*p*), nor could the Court release the restriction, although it would be clearly for her benefit so to do (*q*). But it is now provided by the Conveyancing Act, 1881, that, notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any pro-

Interest of a married woman may be bound by Court, notwithstanding restraint on anticipation, and she may appoint attorney.

(*n*) Taylor *v.* Meads, 4 D. J. & S. 597.

(*o*) Stead *v.* Nelson, 2 Beav. 245; Major *v.* Lansley, 3 Russ. & My. 357; Newcomen *v.* Hassard, 4 Ir. Ch. Rep. 268, 273.

(*p*) Kenrick *v.* Wood, L. R. 2 Eq. 333.

(*q*) Robinson *v.* Wheelwright, 21 Beav. 214; 6 De G. Mac. & Gor. 535; see Wilton *v.* Hill, 25 L. J. Ch. 156.

perty (*qq*), and the Act also empowers a married woman by deed to appoint an attorney for the purpose of executing any deed or doing any act which she herself might do (*r*).

What amounts to a restraint on anticipation.

A direction that the income shall be paid from time to time into the proper hands of the wife will not amount to a restraint on anticipation (*rr*). So in a case (*s*) where stock was covenanted to be transferred to trustees to pay the dividends to such persons, and in such proportions as the wife, during her coverture, should, notwithstanding her coverture, by any note or writing under hand appoint, and in default of appointment, into her proper hands, the Court decreed a transfer of the fund to the husband with the wife's consent. Again, where a testator devised an estate to trustees in trust to pay the rents, &c., for the separate use of his wife for her life, and to pay the same as the same should become due and payable into her hands, and not otherwise; and he declared that her receipt alone for what should be actually paid into her own proper hands for such rents should be a good and sufficient discharge to the trustees. These words were held not to amount to a restraint on alienation (*t*).

On the other hand, a direction that the receipt of the wife for the annual income *after it shall have become due*, shall be a sufficient discharge (*u*); or that the receipt of the wife alone, or of some person authorised by her to receive payment of the income after such *shall have become due*, shall be a sufficient discharge (*x*), has been held sufficient to restrain her from anticipating the income. The question to be considered in cases of this kind is, whether the words used are used for the purpose of unfolding what is implied in the gift to the separate use, or for the more extended purpose of modifying and controlling the gift (*y*).

(*qq*) Sect. 39.

(*r*) Sect. 40.

(*rr*) Parkes *v.* White, 11 Ves. 221.

(*s*) Clarke *v.* Pistor, cited 3 Bro. C. C. 568.

(*t*) Acton *v.* White, 1 Sim. & Stu. 429.

(*u*) Field *v.* Evans, 15 Sim. 375.

(*x*) Baker *v.* Bradley, 7 De G. M. & G. 597.

(*y*) *Per* Turner, L. J., in Baker *v.* Bradley, 7 De G. M. & G. 623.

Again, where property was limited for the whole and sole separate use of a married woman, and not to be sold or mortgaged, it was held that an intention to restrain anticipation was sufficiently indicated (*z*). So where lands were devised to the use of E., the rents of which she was to receive from the tenants herself while she lived, whether married or single, followed by a declaration that no sale or mortgage should take place during the life of E., it was held that E. was entitled for her separate use, without power of anticipation (*a*).

Restraint on anticipation may be annexed to corpus as well as income.

A restraint on anticipation may be annexed not only to a trust of income, but also to a limitation of the fee simple of land, or to an absolute gift of consols or other personal property producing income (*b*).

Restraint on anticipation not affected by Act of 1882.

It is provided by the Married Women's Property Act, 1882, that nothing therein contained shall interfere with or render inoperative any restriction against anticipation attached or to be attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument (*bb*).

A gift for separate use without the intervention of trustees, makes husband a trustee, until wife assents to the destruction of the separate trust.

Where money or other property has been given to the separate use of a wife without the intervention of trustees, and has been paid or transferred to the husband, the separate trust remains attached to it unless and until it is shewn, or can be inferred from the circumstances, that she has assented to its being freed from that trust. Such an inference will be made if the husband, with the acquiescence of the wife, uses the money in trade or in his family expenditure (*c*), but in a case where a married woman to whom a legacy had been given, received from the executor a country cheque which she endorsed and handed over to her husband,

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(*z*) Steedman *v.* Poole, 6 Ha. 193.

(*a*) Goulder *v.* Camm, 1 De G. F. & J. 146. See also Sockett *v.* Wray, 4 Bro. C. C. 483; *In re* Young's Settlement, 18 Beav. 199; Ross's Trust, 1 Sim. N. S. 196.

(*b*) Baggett *v.* Meux, 1 Ph. 627; *Re* Ellis' Trusts, L. R. 17 Eq. 409. See Croughton's Trusts, 8 Ch. D. 460.

(*bb*) Sec. 19.

(*c*) Gardner *v.* Gardner, 1 Giff. 129. It is apprehended that this inference is not affected by s. 3 of the Married Women's Property Act, 1882, and that the money would, under the circumstances, be considered as given, not lent, to the husband.

whose bankers received it and by his direction placed the money to his deposit account, it was held on the evidence that the wife did not intend to give the cheque to her husband and that it was still her separate estate (*d*).

Separate income of wife, how long it remains her separate property.

In like manner the separate income of a wife remains her separate property so long as it is retained in the hands of the trustees of the settlement, or is paid to her separate account at a bank, or to any person by her order and as her trustee, or if paid into her own hands remains under her separate control, and any stock or other property including real estate (*e*), or personal chattels (*f*), purchased with the savings of her separate income, is also her separate property. But if the income is paid to the husband with the wife's acquiescence, a gift of such income from her to him will be presumed (*g*), and where the trust money is lent to the husband with the wife's consent, and he retains it for some time without paying interest, there will be a similar presumption as regards such interest (*h*).

Savings of separate income.

Payment of income to husband with wife's consent.

A trust of income for separate use attaches during each coverture, and is suspended during discoverture.

When property is given in trust to pay the income to a woman who is unmarried at the date of the gift for her separate use either with or without a restraint on anticipation, the separate trust attaches upon her subsequent marriage. In like manner a similar trust in favour of a married woman who becomes a widow and then marries again, revives on her second marriage (*i*), unless confined by the express terms of the instrument to the first coverture (*k*). In these cases the income which is received by the *cestui que trust* while discovert, or by any person on her behalf, from the trustees of the fund, becomes her absolute property, and if unspent at the time of her subsequent marriage would, under the law as it stood prior to the Act of 1882, have passed to the husband in his

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(*d*) Green *v.* Carlill, 4 C. D. 882.

(*e*) Darkin *v.* Darkin, 17 Beav. 578.

(*f*) Newlands *v.* Paynter, 4 M. & C. 408.

(*g*) Beresford *v.* Archbishop of Armagh, 13 Sim. 643; Arthur *v.* Arthur, 11 Ir. Eq. Rep. 511, 513; Caton *v.* Rideout, 1 M. & G. 599.

(*h*) Rowley *v.* Unwin, 2 K. & J. 139; *Ex parte* Green, 2 Deac. & Ch. 113.

(*i*) Tullett *v.* Armstrong, 1 Beav. 1; Scarborough *v.* Borman, 4 M. & C. 377.

(*k*) Moore *v.* Morris, 3 Jur. N. S. 552.

marital right (*l*). But if it should happen that any part of such income, although received by the trustees, has not been paid over by them to the *cestui que trust* or to any person on her behalf at the time of the marriage, the separate trust attaches to the money retained in the hands of the trustees (*m*).

So also a trust of corpus for separate use comes into operation on marriage.

So also a trust for separate use annexed to the corpus of property whether real or personal given to an unmarried woman who has afterwards married (before the recent Act) will have come into operation on the marriage, provided that she did no act while discovert to destroy the separate trust. Thus in a case where a leasehold house and the furniture in it were given by will without the intervention of trustees to a single woman for her separate use, and she subsequently married, and after the marriage she and her husband took possession of the house and furniture, it was held that they retained their separate character, and were not liable to the husband's debts (*n*).

What acts of the wife will put an end to the separate trust.

In order to keep alive the separate trust, the property must have remained in the same state until the marriage. Thus where a sum of stock given by will to a single woman for her separate use without power of anticipation was at her request transferred into her name by the executors, and she sold it out and spent part of the money and with the remainder bought some bank shares and Canada bonds, and then married (before the recent Act), the Court held that the bank shares and Canada bonds belonged to her husband free from any trust (*p*). It seems to have been the opinion of the V.-C. in this case that the act which destroyed the separate trust was, not the transfer of the stock to the lady, but her sale of it, and that if the stock had remained in her name up to the marriage, it would have been her separate property after that event.

Her contracts.

Independently of the Married Women's Property Act, 1882, a contract entered into by a married woman for a

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(*l*) Spicer *v.* Dawson, 26 L. J. Ch. 704.

(*m*) Ashton *v.* Macdougall, 5 Beav. 56.

(*n*) Newlands *v.* Paynter, 4 M. & C. 408.

(*p*) Wright *v.* Wright, 2 J. & H. 647.

valuable consideration for the mortgage or other disposition of her separate estate is binding on her (*q*), and she is entitled to enter into a contract for the purchase of property out of her separate estate (*r*); and the separate estate is bound, whether it is referred to in the contract or not (*s*). Also an agreement for a valuable consideration by a married woman to execute a power limited to her will be enforced (*t*).

Wife's right to furniture settled to separate use against husband's assignees.

When furniture belonging to the husband is by an antenuptial settlement assigned to a trustee for the separate use of the wife, it will not pass to the trustee in bankruptcy of the husband as being in his order and disposition at the time of the bankruptcy (*u*), nor need the assignment be registered under the Bills of Sale Acts, marriage settlements being expressly excluded from the operation of those Acts (*x*). But a *post-nuptial* settlement is not within the exception, and must be registered (*y*). If registered, it will prevail against the husband's creditors, although the goods may be in his house at the time of his bankruptcy (*z*), subject, however, in case the settlement is voluntary, to the operation of sect. 91 of the Bankruptcy Act, 1869.

IV. *The liability of the wife's separate property, and of the husband for her debts and engagements contracted during the coverture, and before the marriage, respectively.*

Before Act of 1882 a married woman might contract debts to be paid out of her separate property.

Previously to the Married Women's Property Act, 1882, a married woman could not enter into any contract on which she was liable to be personally sued (*a*), but if she had separate property might, as an incident of such property, contract debts and engagements to be paid

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(*q*) Stead *v.* Nelson, 2 Beav. 245.

(*r*) 2 Bright's H. & W. 254.

(*s*) Dowling *v.* Maguire, Ll. & G. *t.* Plunk. 1.

(*t*) Dowell *v.* Dew, 12 L. J. Chan. 158.

(*u*) Jarman *v.* Wolloton, 3 T. R. 618; Simmons *v.* Edwards, 16 M. & W. 838.

(*x*) Act of 1878, sec. 4, Act of 1882, sec. 3.

(*y*) Fowler *v.* Foster, 28 L. J. Q. B. 210.

(*z*) *Ex parte* Cox, 1 Ch. D. 302.

(*a*) Marshall *v.* Rutton, 8 T. R. 545.

and satisfied out of it, and a Court of Equity would enforce payment by a decree against the trustee in whose hands the property was (*b*). It was not necessary that the contract should refer in terms to the separate property; it was sufficient if an intention to charge it could be collected from the nature of the contract or from the circumstances. Thus bonds, bills, promissory notes, and other written obligations were enforced against the separate property, because these acts would otherwise be nugatory, and consequently an intention to charge will be presumed (*c*). With regard to mere general engagements, such as tradesmen's bills and claims of that nature, the question in each case depended on whether credit was given to the wife. Thus if the wife is living separately from her husband the inference would generally be that the credit was given to her, though if they were living together, it would be more reasonable to suppose that she intended her husband to pay (*d*).

General engagements.

By Act of 1882 wife rendered capable of incurring debts and liabilities, and of suing and being sued in respect of her separate property.

It is now provided by the Married Women's Property Act, 1882, that a married woman shall be capable of entering into, and rendering herself liable in respect of, and to the extent of her separate property, on any contract, and of suing and being sued, either in contract or in tort, or otherwise, and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise. And it also provided that every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property unless the contrary be shown (*e*).

General engagements do not

Before the Act of 1882 it was held that the general

(*b*) Standford *v.* Marshall, 2 Atk. 69; Hulme *v.* Tenant, 1 B. C. C. 15; Heatley *v.* Thomas, 15 Ves. 596; Bullpin *v.* Clarke, 17 Ves. 365; Murray *v.* Barlee, 3 M. & K. 209; Johnson *v.* Gallagher, 3 De G. F. & J. 494.

(*c*) Murray *v.* Barlee, 3 M. & K. 209.

(*d*) Johnson *v.* Gallagher, *ubi suprà.*

(*e*) Sec. 1, sub.-s. 2, 3.

prevent subsequent alienation of separate property.

engagements of a married woman were enforceable against the separate estate belonging to her at the time of the contract, if and so far as the same remained vested in her at the date of the judgment, and did not prevent an intermediate alienation (*f*). It is conceived that the law is the same as regards general engagements entered into since the Act.

General engagements could not before the Act be enforced against separate property subsequently acquired, but they may now.

It was also held before the Act that the general engagements of a married woman could not be enforced against any separate estate acquired by her after the date of the contract (*g*). But it is now provided that any contract entered into by a married woman with respect to and to bind her separate property, shall bind not only the separate property which she was possessed of or entitled to at the date of the contract, but also all separate property which she may afterwards acquire (*h*).

Property over which wife has general power of appointment, and also property appointed under general testamentary power liable to debts.

If property is settled in trust for the separate use of a married woman for life, with a power for her to appoint the corpus by deed or will, with an ultimate trust for her executors or administrators, the property so settled is subject, both before and since the new Act, to her general engagements (*hh*). So also the execution of a general power by will by a married woman has the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate (*i*).

Position of husband, where wife executrix before recent Act.

The husband being answerable for his wife's acts, she could not before the recent Act undertake the office of executrix without his consent, nor give discharges for payments made to her in that character. The husband in his marital right was entitled to dispose of the personal estate vested in his wife as executrix, or to give receipts for or release debts due to the testator's estate (*j*); and he was liable for assets received or *devastavits* committed by him or his wife during the coverture (*k*). But since the new Act, a wife may accept

Married

(*f*) Picard *v.* Hine, 5 Ch. 274; Pike *v.* Fitzgibbon, 17 Ch. D. 454.

(*g*) Pike *v.* Fitzgibbon, *ubi suprà.*

(*h*) Sect. 1, sub.-s. 4.

(*hh*) Mayd *v.* Field, 3 Ch. D. 587.

(*i*) Sect. 4. See also London Chartered Bank of Australia *v.* Lempriere, L. R. 4 P. C. 596; *In re* Harvey's Estate, 13 Ch. D. 216.

(*j*) Williams on Executors, pt. 3, bk. 1, ch. 4; Thrustout *v.* Coppin, 2 W. Bl. 800.

(*k*) Smith *v.* Smith, 21 Beav. 385.

woman can now be trustee and executrix, and liable as such.

the office of trustee, executrix, or administratrix, and may act therein as if she were a *feme sole*, and she will be liable in respect and to the extent of her separate property for all breaches of trust and *devastavits*, and her husband will (it is apprehended), have no right to intermeddle, and will be free from all liability for his wife's acts (*l*).

Husband not liable for wife's debts contracted after marriage, unless he has given her authority.

Authority is a question of fact or reasonable presumption according to circumstances.

Whether a wife has or has not separate property, her husband is not liable for debts contracted by her during the marriage, unless he has given her authority to pledge his credit. Whether she has such an authority is a question of fact or reasonable presumption to be determined in each case according to the circumstances. While they live together, it will be presumed, in the absence of evidence to the contrary, that he has authorised her to give orders to tradesmen for such things as fall within the domestic department ordinarily entrusted to the wife's management, *e.g.*, the supply of provisions for the house, clothing for the members of the family, and things of that sort (*ll*). The presumption may be rebutted by evidence that he has supplied her with sufficient money to buy the necessary articles, and has expressly ordered her not to get them on credit, subject however to the qualification, that if he has up to the time of giving such order acted in such a manner as to lead tradesmen to suppose that the authority exists, he would be bound to inform them of its withdrawal (*m*).

No presumption if living separate, except as a matter of necessity.

If the husband and wife are living separately, the wife has no authority to pledge her husband's credit, except as a matter of necessity, as where she has been deserted or forced to leave her home, and she has no sufficient means of her own. If they separate by mutual consent, there is no implied authority, so long as he makes her an adequate allowance, and duly pays it (*n*).

It has been held that a person advancing money to a married woman who has been deserted by her husband,

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(*l*) Secs. 18, 24.

(*ll*) Philipson *v.* Hayter, 6 C. P. 38.

(*m*) Jolly *v.* Rees, 33 L. J. C. P. 177; Debenham *v.* Mellon, 6 App. Cas. 24. The law as above stated is not altered by the recent Act.

(*n*) Johnson *v.* Sumner, 27 L. J. Exch. 341; Biffin *v.* Bignell, 31 L. J. Ex. 189; Eastland *v.* Burchell, 3 Q. B. D. 432.

which money has been laid out in necessaries for her, is in a court of equity entitled to stand in the place of the persons who actually supplied those necessaries, and to recover the money from the husband (*o*).

Before Act of 1870, husband was liable for his wife's debts contracted before marriage.

Until the passing of the Married Women's Property Act, 1870, a husband was liable to all his wife's debts contracted before marriage, on the principle that as he took her property so he ought to take her liabilities. The husband and wife had to be sued jointly, and if no action was brought during the coverture, and the wife survived, her liability revived. In a late case (*p*), it was held that property settled by a woman on her marriage for her separate use was liable, after her husband's bankruptcy, for debts contracted by her before marriage.

Act of 1870 makes wife liable in respect of her separate property, and husband not liable.

By the Married Women's Property Act, 1870, it was provided (*q*) that a husband should not by reason of any marriage which should take place after it came into operation (on 9th August, 1870), be liable for the debts of his wife contracted *before* marriage, but the wife should be liable to be sued for, and any property belonging to her for her separate use should be liable to satisfy such debts as if she had continued unmarried (*r*). The effect of this enactment was that if a woman possessed of property, and owing debts, married without a settlement, so that her property passed to her husband, her creditors were without remedy. The Act deprived them of the right to sue the husband, and it would have been of no use to sue the wife as she would have no property to meet the demand.

Amendment Act of 1874 revives husband's liability to extent of assets acquired from wife.

This defect was remedied by the Married Women's Property Act Amendment Act, 1874 (*s*), which repeals, so far as respects marriages after the 30th July, 1874, so much of the Act of 1870 as enacted that a husband should not be liable for the debts of his wife contracted before marriage, and substitutes other pro-

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(*o*) Jenner *v.* Morris, 1 D. & S. 218; 3 De G. F. & J. 45; Deare *v.* Soutten, L. R. 9 Eq. 151.

(*p*) Chubb *v.* Stretch, L. R. 9 Eq. 555.

(*q*) Sect. 12.

(*r*) Sanger *v.* Sanger, L. R. 11 Eq. 470.

(*s*) 37 & 38 Vict. c. 50.

visions, making the husband liable to the extent only of the assets therein specified, being in effect, all property acquired by him in his wife's right, or which he might with reasonable diligence have so acquired.

Provision of Act of 1882 as to liability of wife for her ante-nuptial debts,

The Acts of 1870 and 1874 are, both of them, repealed by the Married Women's Property Act, 1882, by which last-mentioned Act it is provided, that a woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted and all contracts entered into, or wrongs committed by her before her marriage, including any sum for which she may be liable as a contributory under the Act relating to joint stock companies, and that all sums recovered against her in respect thereof as for costs, shall be payable out of her separate property, and that between her and her husband, unless there be any contract between them to the contrary, her separate property shall be primarily liable for all such debts, contracts, or wrongs, and all damages and costs recovered in respect thereof (*t*). But this provision is not to increase or decrease the liability of any woman married before the commencement of the Act for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she might become entitled by that Act, and to which she would not have been entitled under the Acts of 1870 and 1874 or otherwise, if that Act had not passed. And it is also provided that a husband shall be liable for the debts of his wife contracted, and all contracts entered into or wrongs committed by her before marriage, to the extent of all property of the wife acquired by him from or through her (*u*).

and as to liability of husband for same.

Restraint on anticipation, a protection against post-nuptial, but not ante-nuptial debts.

The contracts and engagements of a married woman cannot be enforced against property which she is restrained from anticipating, nor can she be made liable out of such property, for the consequences of fraud committed by her (*x*), but a restraint on anticipation contained in a marriage settlement has no validity against debts contracted by the wife before marriage (*y*).

(*t*) Sec. 13.

(*u*) Sec. 14.

(*x*) Jackson *v.* Hobhouse, 2 Mer. 483; Clive *v.* Carew, 1 J. & H. 199; Arnold *v.* Woodhams, 16 Eq. 30.

(*y*) 45 & 46 Vict. c. 75, s. 19.

V. *The effect of desertion, or separation, as to the wife's property, and her capacity to contract.*

Deserted wife may now obtain order to protect earnings.

A woman deserted by her husband is empowered by the Divorce Act, 1857 (*z*), to apply to a magistrate, or, to justices in Petty Sessions, or to the Divorce Court for an order to protect "any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband, or his creditors, or any person claiming under him."

After judicial separation, wife to be deemed a *feme sole* as to property, and for purposes of contract, and of suing and being sued;

By the same Act it is provided that in every case of a judicial separation the wife shall from the date of the sentence and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire, or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead; provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between her husband and herself whilst separate. And that in every case of a judicial separation the wife shall, whilst so separated, be considered as a *feme sole*, for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding, and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant, provided that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use, provided also that

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(*z*) 20 & 21 Vict. c. 85, s. 21; see also 21 & 22 Vict. c. 108, s. 6.

nothing shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband (*a*).

and also as regards property belonging to her as executrix or trustee.

By the Divorce Act Amendment Act (*b*), it is declared that the provisions contained in that Act and in the Divorce Act respecting the property of a wife who has obtained a decree for judicial separation, or an order for protection, shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee, since the sentence of separation or the commencement of the desertion (as the case may be); and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Cases to which protecting order has been held to apply.

In the case of a judicial separation, or of the wife obtaining a protection order, she is entitled absolutely not only to property given to her afterwards (*c*), but also to property which was reversionary or not reduced into possession before the separation or protection order, and which falls into possession, or she reduces into possession afterwards (*d*). And in a case where a fund was bequeathed to trustees in trust to pay the income to the wife for her separate use without power of anticipation, and after her decease to her appointees by deed or will, and she, after obtaining a protecting order, appointed the fund to her daughter, the Court on the joint application of her and her daughter, ordered payment of the fund to them (*e*).

Protecting order should be general.

A protecting order should be in general terms, for the Court has no power to decide what title the wife has to specific property (*f*).

After divorce or judicial separation Court may order settlement for benefit of innocent party and children.

By the Divorce Act, 1857, it is provided that in any case in which the Court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife was entitled to any property either in possession or reversion, it shall be lawful for the Court, if it should think

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(*a*) Sec. 26.

(*b*) 21 & 22 Vict. c. 108, s. 7.

(*c*) *Re* Kingsley, 26 Beav. 85.

(*d*) *Re* Insole, L. R. 1 Eq. 470; Johnson *v.* Lander, *ib.* 7 Eq. 228; *Re* Coward & Adam's Purchase, *ib.* 20 Eq. 179; Nicholson *v.* Drury, &c. Compy., 7 Ch. D. 48.

(*e*) Cooke *v.* Fuller, 26 Beav. 99.

(*f*) Mullineux, *Ex parte*, 1 S. & T. 79; 27 L. J. Prob. 19.

proper, to order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage or either of them (*g*).

Before the passing of the Divorce Amendment Act, the Court had no jurisdiction to release a husband from the stipulations contained in his marriage settlement after a decree for dissolution of his marriage (*h*).

After (but not after judicial separation Court may alter ante nuptial or post nuptial settlement.

By that Act, however, it is provided that the Court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into the existence of ante nuptial or post nuptial settlements made on the parties, and may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage, or of their respective parents, as to the Court shall seem fit (*i*).

It has been held that a separation deed is a post nuptial settlement for the purpose of the last-mentioned enactment, and that the Court may, after a dissolution of the marriage, relieve a husband from a covenant in a separation deed (*j*). But this power cannot be exercised after a judicial separation (*k*).

Power of wife during transportation of husband.

If the husband abandon his country or is transported, it appears that during the period of such abandonment or transportation, and until his actual return, the wife may contract, pay, and receive money, or sue and be sued as a single woman (*l*).

Conviction of husband for assault on wife may have effect of judicial separation.

By the Matrimonial Clauses Act, 1878 (*m*), it is provided that if a husband shall be convicted summarily or otherwise of an aggravated assault upon his wife the Court or magistrate may, if satisfied that her future safety is in peril, order that the wife shall be no longer bound to cohabit with her husband, and such order is to have the force and effect of a decree of judicial separation on the ground of cruelty.

(*g*) 20 & 21 Vict. c. 85, sect. 45; see also 23 & 24 Vict. c. 144, sect. 6.

(*h*) Evans *v.* Carrington, 6 Jur. N.S. 268; Bell *v.* Marquis of Anglesey, 1 S. & T. 655.

(*i*) 22 & 23 Vict. c. 61, s. 6.

(*j*) Worsley *v.* Worsley, L. R. 1 P. & M. 648; Bullock *v.* Bullock, 2 *ib.* 389; see also Morrall v. Morrall, 6 P. D. 98.

(*k*) Gandy *v.* Gandy, 7 P. D. 168.

(*l*) 2 Bright's H. & W. 70.

(*m*) 41 Vict. c. 19, sect. 4.

SETTLEMENTS.

Division of subject.

In this Dissertation it is proposed to consider—I. Marriage Settlements generally. II. Voluntary Settlements, how far they are valid as against (1) subsequent purchasers, (2) creditors, and (3) the settlor himself and his representatives; and III. Stamps on Settlements.

I. *Marriage settlements generally* (*a*).

Trusts for payment of income during lives of husband and wife.

In settlements of personal estate made upon marriage, the first trusts (after providing for the investment of the trust funds) generally relate to the destination of the income during the lives of the husband and wife. When the property settled comes from the husband, the first life interest is, except under special circumstances, given to him. When, on the other hand, the wife makes the settlement, it is usual to give her the income during the coverture for her separate use, without power of anticipation, but the husband is sometimes permitted to receive the income of his wife's as well as of his own property, charged with the payment to the wife of an annual sum during the coverture, or even without such charge (*b*).

Practice as to marriage settlements not likely to be much affected by recent Act.

(*a*) It is considered that the practice as to marriage settlements will not be materially affected by the passing of the Married Women's Property Act, 1882. That Act will prevent the husband from taking possession of, or pledging, his wife's property without her consent, but does not fulfil the main object of a settlement, viz., the securing of a certain provision for the issue of the marriage, which will be safe against the engagements of the husband, and now of the wife also.

Observations on the question whether the wife or husband should have the first life interest n the wife's roperty.

(*b*) When the property settled by the wife is of moderate amount and the husband has means of his own, or is in a trade or profession, the arrangement by which the wife takes the whole income during the joint lives is a reasonable and convenient one, as it secures an inalienable provision for the family free from the husband's obligations. But if the wife's property is large, the case is different, particularly if the husband has little or nothing and is in no business or profession. It is not desirable in the interest of either party that the husband, on whom the law throws the burden of maintaining the family, should be entirely dependent on his wife for the means of doing so; and this is more especially the case where the property is a landed estate. The question was

Gifts over on alienation or bankruptcy, &c.

Sometimes it is desired, particularly if the husband is improvident, or is in embarrassed circumstances, or is engaged in a hazardous business, to make his life interest determinable on his bankruptcy, or on his attempting to alien or charge it. With regard to clauses of this description, the following points may be considered as settled :—

Cases in which such gifts over are valid.

1. That where the property settled comes from the wife, or from any other source than the husband himself, a gift over on the husband's bankruptcy or alienation is valid (*b*). And this is the case where the wife becomes entitled to money after the marriage, and she and her husband join in so settling it (*c*). 2. That where the property settled comes from the husband himself, such a gift over is invalid as against his trustee in bankruptcy (*d*), but good against his alienees (*e*). 3. That where the husband receives part of his wife's fortune on marriage and settles property of his own upon himself for life with a gift over on bankruptcy, &c., the wife will be considered as a purchaser of the property so settled to the extent of her fortune received by the husband, and consequently the gift over will to that extent be valid against the husband's trustee in bankruptcy (*f*).

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raised before the late V.-C. Kindersley in chambers on the occasion of the marriage of a ward of Court having a large landed property with a gentleman who was the heir to a peerage. His Honor considered that the husband ought to be the manager of the property with such advantages in the way of position and influence as its possession would confer on him, and accordingly gave him the first life estate determinable on bankruptcy or alienation, and subject to the payment of a very liberal annuity to the wife for pin money.

(*b*) Dommett *v.* Bedford, 3 Ves. 149; Lockyer *v.* Savage, 2 Stra. 947; *Ex parte* Hinton, 14 Ves. 598.

(*c*) Montefiore *v.* Behrens, 1 L. R. Eq. 171.

(*d*) Higinbotham *v.* Holme, 19 Ves. 88.

(*e*) Brooke *v.* Pearson, 27 Beav. 181; Knight *v.* Browne, 30 L. J. Ch. 649. In Phipps *v.* Lord Ennismore, 4 Russ. 131, a life estate was given to A. by marriage settlement, and by a separate deed executed at the same time he covenanted with the trustees that he would not alien or encumber his life estate, and that if he did, then the trustees should apply the rents for the benefit of A. and his wife and children, or any of them at their discretion. A. afterwards charged his life estate for valuable consideration in favour of persons who had no notice of the second deed, and it was held that the second deed was fraudulent and void as against them. The ground of this decision was, it is conceived, the covenant being contained in a separate and, as it were, secret deed.

(*f*) Lester *v.* Garland, 5 Sim. 205. See also *Ex parte* Cooke, 8 Ves. 353; *Ex parte* Hodgson, 19 Ves. 206.

4. That a mere condition annexed to the gift of a life interest that the donee shall not alien, unless followed by a gift over, or unless the destination of the income during the rest of the life of the donee is in some way provided for by the instrument, will be inoperative (*g*). 5. That a clause forfeiting a life interest on the bankruptcy of the donee, though in terms referring to a future bankruptcy, takes effect, where the donee is an uncertificated bankrupt, at the date of the instrument of gift (*h*). 6. That if the bankruptcy is annulled before the life interest falls into possession, or before any payment has become due in respect thereof, there is no forfeiture (*i*), and this rule has been applied to an immediate life interest given by a will, where the annulment took place nine months after the testator's death, but before the assets were realised (*k*). But where there is a realised fund on which income has accrued while the bankruptcy was in force, the fact that it is not actually paid over to the trustee in bankruptcy, or claimed by him before the annulment, does not, it is apprehended, prevent a forfeiture (*l*).

A life interest, subject to a gift over in case the donee shall assign, mortgage, or in any manner anticipate the income, is not forfeited by an involuntary alienation, *e.g.*, bankruptcy (*m*); but it is otherwise, if the gift over is in case the donee shall "do or suffer," or shall "do or permit" anything whereby the property shall be assigned or charged, &c. (*n*).

(*g*) Brandon *v.* Robinson, 18 Ves. 429. A proviso annexed to a trust to pay an annuity that the annuity shall cease upon alienation, &c., is valid and operative. In such a case there is in *effect* a gift over, as the annuity sinks into the property charged therewith, or out of which it is payable for the benefit of the persons entitled to such property: Dommett *v.* Bedford, 3 Ves. 149; Rochford *v.* Hackman, 9 Hare, 475, 481; Joel *v.* Mills, 3 K. & J. 458.

(*h*) Manning *v.* Chambers, 1 De G. & Sm. 282; Seymour *v.* Lucas, 1 Drew. & Sm. 177; *Re* Muggeridge's Trust, Johns. 625; Trappes *v.* Meredith, L. R. 7 Ch. App. 248.

(*i*) White *v.* Chitty, L. R. 1 Eq. 372; Trappes *v.* Meredith, *ib.* 9 Eq. 229.

(*k*) Lloyd *v.* Lloyd, 2 Eq. 722; see also Ancona *v.* Waddell, 10 Ch. D. 157.

(*l*) *In re* Parnham's Trust, 13 Eq. 413; Samuel *v.* Samuel, 12 Ch. D. 52.

(*m*) Whitfield *v.* Prickett, 2 Keen, 608; Graham *v.* Lee, 23 Beav. 388.

(*n*) Roffey *v.* Bent, 3 Eq. 759; *Ex parte* Eyston, 7 Ch. D. 145.

After the decease of both husband and wife, the ordinary trusts of a marriage settlement are for the children, or remoter issue of the marriage (*p*), as the husband and wife or the survivor shall appoint; and in default of appointment for the children equally, the shares of sons to vest at twenty-one, and the shares of daughters to vest at twenty-one or marriage, with a provision that any appointed share should be brought into hotchpot.

Trusts for issue after decease of husband and wife.

The advantage of extending the power to remoter issue is, that if a son to whom no share has been appointed, should die, leaving issue, the donees of the power are enabled to provide for such issue; and other cases may happen in which it may be desirable that grandchildren should be provided for, either by way of executory limitation after a life interest given to their father or mother, or without any such intermediate interest.

The maintenance clause which used to be inserted as a common form in settlements, may now be safely omitted, having regard to sect. 43 of the Conveyancing Act, 1881, which applies to instruments coming into operation either before or after the commencement of the Act, and is as follows:—

Maintenance clause may now be omitted.

(1.) Where any property is held by trustees in trust for an

Provisions

(*p*) On the recent marriage of a ward of Court possessed of a considerable fortune, the judge before whom the settlement came for approval refused to allow the power of appointment given to the lady to be extended to remoter issue than children, on the ground that she might capriciously pass over a child in order to benefit a favourite grandchild. The learned judge's objection seems to the writer to have been founded on a very partial view of the matter, and in order to be consistent, he should not have allowed the lady any power of appointment at all, even among her children, because she would be quite as likely to give an unfair preference to one child over another, as to a grandchild over its parent. As regards the general question whether there should be a power of appointment at all, the balance of convenience is generally considered to be in favour of giving the power. It is true that it may be, and sometimes is, unfairly and capriciously exercised, but the danger of this is not deemed sufficient to outweigh the advantage of putting it in the power of the parents to make an unequal division in case circumstances should arise rendering such a course desirable; as for example, an accession of fortune to one child from another source, or insolvency, or misconduct.

Whether power of appointment should be extended to issue.

in recent Act as to maintenance

infant, either for life or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

and accumulation of surplus income.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

Application of maintenance clause to a woman marrying during infancy.

If a woman marries while an infant, it is apprehended that under the above section the trustees might continue to apply the income of any trust fund belonging to her for her maintenance or benefit, but it would be desirable to avoid all difficulty on this point, by inserting in future instruments a clause enabling the trustees in such a case to pay her the income, and that her receipt shall be a sufficient discharge for such income, notwithstanding her infancy. It will be borne in mind that the receipt of the husband will not in future be sufficient.

Advancement clause.

The advancement clause, according to the usual form, enables the trustees to raise any part not exceeding one half of a child's vested or presumptive share, and apply it for his or her advancement, preferment, or benefit. It has been held that the word "benefit" has a more extensive application than "advancement" or "preferment," and authorises the payment of debts incurred by the object of the power (*r*). And under this power, money can be raised for maintenance (*rr*).

Ultimate trusts in default of issue.

If there are no issue of the marriage who live to attain a vested interest, it is usually provided that the trust property, if settled by the husband, shall revert to him, and if settled by the wife, shall revert to her, if she survives the coverture, but if not, shall go to her appointees by will, or in default of appointment, to her next of kin, under the Statutes of Distribution, as if she had died intestate and without having been married (*s*).

Possibility of divorce, how it affects form of alternate trusts.

It will be borne in mind, that as a marriage may now be dissolved otherwise than by the death of one of the parties, the alternative events to be provided for in the ultimate trusts of the wife's property are, not the wife surviving or dying in the lifetime of her husband, but the wife surviving, or dying during the continuance of, the coverture. Otherwise, should the marriage be dissolved by a divorce, the wife, though the innocent party, would not, according to the terms of the deed, take an absolute interest in her property, unless she also survived her husband (*t*).

Construction of word "unmarried" in ultimate trust.

The ultimate trust, in default of appointment by will and in case the wife dies during the coverture, should be in favour of the persons who would have taken under the Statutes of Distribution if the wife had died intestate,

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(*r*) Lowther *v.* Bentinck, L. R. 19 Eq. 167.

(*rr*) *Re* Budd's Will, 1 Ch. D. 226.

(*s*) With respect to women married before the 1st January, 1883, it was usual and proper in settlements to give to the wife a testamentary power of appointment whether she survived her husband or not, because if given to her in the latter event only, a will made during the coverture would not have taken effect had she survived: Willock *v.* Noble, L. R. 7 H. L. 580. But, as under the recent Act, the wife's ultimate interest will belong to her for her separate use, a will made during coverture will operate: Bishop *v.* Wall, 3 Ch. D. 194.

(*t*) In Jessop *v.* Blake, 3 Giff. 639; Swift *v.* Wenman, L. R. 10 Eq. 15; Fussell *v.* Dowding, *ib.* 14 Eq. 421, it appears to have been held that a divorce on account of the husband's misconduct (there being no issue) had the effect of placing the parties in the same position as if the husband had died on the day of the divorce, and the fund was accordingly ordered to be paid to the wife, notwithstanding (in the two latter cases) that the settlement gave the husband a life interest in the event of his being the survivor. But these decisions have been disapproved of in a recent case, Fitzgerald *v.* Chapman, 1 Ch. D. 563, by the present Master of the Rolls, who declined to follow them. See also Burton *v.* Sturgeon, 2 Ch. D. 318.

without having been married. If the word "unmarried" is used, it will be construed to mean "without leaving a husband;" and, consequently, if it should happen that the wife dies, leaving the husband and one infant child, and such child subsequently dies an infant, the whole fund would go to the husband as the next of kin of such child (*u*).

Provision for settling after-acquired property.

A provision for bringing into settlement after-acquired property of the wife has been hitherto usual. Whether the practice in this respect will be materially affected by the recent Act, remains to be seen. On the one hand, such a provision is no longer required in order to protect the property from the claims of the husband, but on the other hand, it will still be necessary where it is wished to secure it for the children of the marriage, or where it is thought for other reasons undesirable that the wife should have the absolute control over it.

With respect to the construction of provisions of this nature, the following points have been decided.

Covenant to settle property to which wife or husband in her right becomes entitled during coverture does not include property vested in her at time of marriage; unless being reversionary it falls into possession during coverture.

1. That a covenant to settle all the property to which the wife or the husband in her right *shall become entitled during the coverture*, does not include property in which the wife has at the time of the marriage a vested interest in possession, nor property in which she has an estate in reversion which does not fall in until the coverture has determined (*x*).

2. That a covenant in this form includes property to which the wife is at the date of the settlement entitled in reversion, whether for a vested or contingent interest, and which interest falls into possession during the coverture. The words "become entitled" import

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(*u*) Pratt *v.* Matthew, 8 De G. M. & G. 522; Clarke *v.* Colls, 9 Ho. of L. Ca. 601.

(*x*) Otter *v.* Melville, 2 De G. & Sm. 257; Hoare *v.* Hornby, 2 Yo. & Col. N. C. 121; Wilton *v.* Colvin, 3 Drew. 617; Archer *v.* Kelly, 1 Drew. & Sm. 300; Churchill *v.* Shepherd, 33 Beav. 107; *Re* Pedder's Settlement, L. R. 10 Eq. 585; *Re* Clinton's Trust, *ib.* 13 Eq. 295; *Re* Michell's Trusts, 9 Ch. D. 5. The cases of Grafftey *v.* Humpage, 2 Beav. 46; James *v.* Durant, 4 Beav. 177; *Re* Hughes' Trusts, 1 Giff. 432; Viant's Settlement, L. R. 18 Eq. 436, seem contrary to the position in the text, but they must be treated either as decided upon the special circumstances of the case, or upon grounds cut away by subsequent cases, such as Archer *v.* Kelly, *ubi suprà*.

a change of condition, and when property in reversion becomes property in possession, its condition is changed sufficiently to satisfy the terms of the covenant (*y*).

In what cases it includes property accruing in reversion during coverture and falling into possession afterwards.

3. That a covenant in this form extends to property to which the wife becomes entitled in reversion during the coverture, and which falls into possession after the coverture has determined, if the husband is the survivor (*z*); and the result is the same where the wife is the survivor, if she joins in the covenant (*a*).

Covenant extending to wife's property at time of marriage includes reversion falling into possession after coverture,

4. That if (as is now usual) the covenant extends to property to which the wife is entitled at the date of the settlement or of the marriage, such a covenant will include property in which she has a reversionary interest at the time of the marriage (whether vested or contingent) but which does not fall into possession until the coverture has determined (*b*).

includes property given to wife's separate use, if she is covenantor,

5. That a provision for settling after-acquired property of the wife binds money given to her separate use, and consequently all money accruing to her after the 31st December, 1882, if such provision is in the form of a covenant by the wife as well as by the husband, or of a general agreement by all parties (*c*). But it is otherwise if the covenant is by the husband only (*d*); and if the provision is in the form of an agreement by all parties *and* a covenant by the husband alone, and the conveyance or act to be made or done is, according to the form of the deed, to be made or done by the husband alone, it seems that money given to the separate use of the wife would not be bound (*e*). But if the conveyance or act is to be made or done by the husband and wife, the separate property is bound (*f*). In a case where the covenant ex-

unless expressly excepted,

(*y*) See Archer *v.* Kelly, *ubi sup.* Blythe *v.* Granville, 13 Sim. 190; *Ex parte* Blake, 16 Beav. 463.

(*z*) Hughes *v.* Young, 9 Jur. N. S. 167; 32 L. J. Ch. 137.

(*a*) Butcher *v.* Butcher, 14 Beav. 222; Cowper Smith *v.* Anstey, W. N. 1877, p. 28.

(*b*) Agar *v.* George, 2 Ch. D. 706.

(*c*) Butcher *v.* Butcher, *ubi sup.*; Willoughby *v.* Middleton, 2 J. & H. 344; Coventry *v.* Coventry, 32 Beav. 612. But see *re* Mainwaring's Settlement, 2 L. R. Eq. 487.

(*d*) Travers *v.* Travers, 2 Beav. 179; Douglas *v.* Congreve, 1 Keen, 423; Grey *v.* Stuart, 2 Giff. 398.

(*e*) Ramsden *v.* Smith, 2 Drew. 298. Dawes *v.* Tredwell, 18 Ch. D. 354.

(*f*) Campbell *v.* Bainbridge, 6 L. R. Eq. 269.

cepted "such future portion, fortune, or estate as should be otherwise settled," it was held that a legacy given to the wife for her separate use was within the exception (*ff*).

does not operate as exercise of power,

6. That a covenant by the husband and wife for settling after-acquired property, does not operate as an exercise of a general power of appointment or as a covenant to exercise such a power (*g*), but if the wife is herself entitled in default of appointment, it is apprehended that her interest will be bound, and that she cannot defeat the covenant by an appointment (*h*).

does not apply where wife is restrained from disposing,

7. That such a covenant does not bind property which the wife is restrained from disposing of (*i*).

puts wife to election, if an infant,

8. That if at the time of the settlement the wife is an infant, and she enters into a covenant to settle her after-acquired property, she must elect whether she will perform such covenant, or give up any interest given to her by the same instrument in her husband's property (*k*). But in a recent case, Jessell, M.R., expressed a doubt whether she could be made under this doctrine to give up property which she is restrained from anticipating (*kk*).

does not include property acquired after coverture,

9. That such a covenant applies only to property acquired during coverture, although the words "during the coverture" are omitted (*l*).

nor to legacy accruing under sec. 33 of Wills Act, *quære*.

It has been held by Vice-Chancellor Kindersley, that property bequeathed by a testator to his daughter who died in his lifetime, but whose husband and child survived him, and which property consequently came within the 33rd section of the Wills Act (*m*), was not subject to a covenant contained in the daughter's marriage settlement for settling her after-acquired property. His Honour thought that the fiction introduced by the 33rd

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(*ff*) Kane *v.* Kane, 16 Ch. D. 207.

(*g*) Ewart *v.* Ewart, 11 Hare, 276; Townshend *v.* Harrowby, 27 L. J. Ch. 553; Bower *v.* Smith, L. R. 11 Eq. 279.

(*h*) Steward *v.* Poppleton, W. N. 1877, p. 29.

(*i*) Coventry *v.* Coventry, *ubi sup.* See also Brooks *v.* Keith, 1 Dr. & Sm. 463.

(*k*) Willoughby *v.* Middleton, *ubi suprà*; Codrington *v.* Lindsay, L. R. 8 Ch. App. 578.

(*kk*) Smith *v.* Lucas, 18 Ch. D. 531.

(*l*) Dickinson *v.* Dillwyn, Carter *v.* Carter, L. R. 8 Eq. 546, 551; *Re* Edwards, L. R. 9 Ch. 97; *Re* Campbell's Policies, 6 Ch. D. 686.

(*m*) 1 Vict. c. 26.

section of the Wills Act was not to be extended further than was necessary to prevent a lapse (*n*).

Power to wife to appoint to future husband and issue of future marriage.

When the property settled on the part of the wife is of considerable amount, it is desirable that a power should be reserved to her to appoint a portion of the trust funds in favour of a second husband, and the issue of a second marriage. In the absence of such a power, the wife may be left a widow by her first husband with only one child, and if she marries again, the whole of her fortune will go to the child of the first marriage, to the exclusion of the family, however large, of the second marriage. And the same observation applies sometimes as regards the property settled by the husband.

Sometimes the original trust is for children by any marriage.

Sometimes the object above referred to is attained by making the trust fund divisible under the terms of the original trust among the children of the wife or husband, as the case may be, by any marriage. If this is done, care should be taken to insert a power to the settlor to revoke, in case of there being a failure of issue of the first marriage.

Form of settlement of land, where children are to take equally.

Where the property to be settled consists of land, and it is desired to settle it so that the children shall take equally, the proper mode of attaining that object is by conveying it to trustees in trust for sale, either at once, or after limitations to the husband and wife successively for life, and then settling the proceeds as personal estate, with a proviso that until sale, the rents and profits shall be paid and applied in the same manner as the income of the proceeds would be applicable if a sale had been made. The trust for sale is mere machinery to effect a division of the property, without the necessity of the complicated and inconvenient limitations which would be necessary if the land were settled as real estate.

Strict settlement.

In the case of an old family estate, it is generally wished to make what is called a strict settlement, *i.e.*, to limit it after the decease of the settlor to the first and other sons successively according to seniority in tail male, charged with an annual sum by way of jointure to the wife if she survives her husband and

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(*n*) Pearce *v.* Graham, 32 L. J. Ch. 359.

with portions for the younger sons and daughters of the marriage.

Powers of leasing, sale, &c., generally introduced into settlements before recent Act.

It has been hitherto usual and proper to insert in settlements of this kind powers enabling the tenant for life to grant leases, and enabling the trustees, on the request of the tenant for life, to sell and exchange, and where the nature of the property required, powers to enfranchise copyholds held of a settled manor, and to make partitions. In the absence of such powers, it was necessary to apply to the Court whenever it was wished to lease for more than twenty-one years, or to sell or exchange, or make a partition.

Powers given by Settled Land Act to a tenant for life.

But it is now provided by the Settled Land Act, 1882 (*o*), which commenced from the 31st December, 1882, that every tenant for life under a settlement, whether made before or after the commencement of the Act, may sell the settled land or any easement, right, or privilege of any kind over or in relation to the same, may enfranchise copyholds held of any settled manor, may make exchanges and partitions, may grant leases—in the case of a building lease, for ninety-nine years, of a mining lease for sixty years, and of any other lease for twenty-one years—may grant licences to copyholders to lease, and may raise money for equality of exchange or partition by mortgage, subject as to all these powers to the conditions prescribed by the Act (*p*). But the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, cannot be sold or leased by the tenant for life without the consent of the trustees or an order of the Court (*q*).

How capital money arising under Act may be applied.

The moneys to arise on any sale, &c., and all other moneys coming within the description of capital money arising under the Act, are to be paid either to the trustees of the settlement or into Court at the option of the tenant for life (*r*), but there must be at least two trustees to receive it, unless the settlement authorises the receipt of capital money, by one (*s*). The money when received,

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(*o*) 45 & 46 Vict. c. 38. The Act is printed at length in an Appendix to this volume.

(*p*) Sects. 3 to 20 inclusive.

(*q*) Sect. 15.

(*r*) Sect. 22.

(*s*) Sect. 39.

may be invested or applied in various modes specified in the Act, including investments on government securities, or on other securities authorised by law or by the terms of the settlement, or on bonds, debentures, or debenture stocks of railway companies, the discharge of incumbrances, the payment for improvements on the settled estate, the purchase of the seignory of any settled land, or of the reversion of settled leaseholds, the purchase of land in fee simple or copyhold land, or leasehold land held for at least sixty years, and the purchase of mines and minerals, either in fee simple, or for a term of sixty years or more (*t*). All such money and all securities on which it may be invested will be considered as land, and will go and devolve as the land wherefrom the money has arisen would have gone under the settlement (*tt*).

Money may be spent in improvements under Act.

The Act specifies what are to be deemed improvements, and enables the trustees or the Court to apply capital money in payment for them on a certificate of the Land Commissioners and of a competent engineer nominated by the trustees and approved by the commissioners or by the Court, or on an order of the Court (*u*). The tenant for life is bound to maintain and repair all improvements, and in some cases to insure, and in failing so to do will be liable to an action by any person interested in the settled estate (*u*).

Tenant for life may cut ripe timber with consent, and sell settled heirlooms.

A tenant for life impeachable for waste in respect of timber is authorised to cut and sell timber ripe and fit for cutting with the consent of the trustees or under an order of the Court (*x*). A tenant for life may also, with the sanction of the Court, sell personal chattels settled as heirlooms (*y*).

Differences between tenant for life and trustees to be settled by Court.

A tenant for life intending to make a sale, &c., to give a month's notice to trustees and their solicitor.

The Act also provides that if at any time a difference arises between a tenant for life and the trustees of the settlement respecting the exercise of any of the powers of the Act, the Court may, on the application of either party, give directions respecting the matter in difference and respecting the costs of the application (*z*); and it also provides that a tenant for life, when intending to make a

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(*t*) Sects. 21, 23, 24.
(*tt*) Sect. 22, sub-sect. 5.
(*u*) Sects. 25 to 30.
(*x*) Sect. 35.
(*y*) Sect. 37.
(*z*) Sect. 44.

sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention to the trustees of the settlement and to their solicitor, if known to him, by a registered letter, which is to be posted not less than one month before the making of the sale, &c., or of a contract for the same (*a*).

Tenant for life to be deemed a trustee of powers.

The above provisions must be read in connection with a subsequent one, which declares that a tenant for life in exercising any power shall have regard to the interests of all parties entitled under the settlement, and shall in relation to the exercise thereof by him be deemed to be in the position and to have the duties and liabilities of a trustee (*b*).

When trustees authorized to interfere.

Taking these provisions together, it is apprehended that the only difference which could arise in the case of a sale between a tenant for life and the trustees and which the Court would have jurisdiction to decide under s. 44, would be whether the power was being exercised *bonâ fide* and with due regard to the interests of all parties. In order to give the trustees the opportunity of ascertaining whether this is so, the month's notice is required, within which time they can if necessary make the application to the Court. If the notice is not given, and the sale is completed, a *bonâ fide* purchaser will have a good title (*c*), but the tenant for life will be guilty of a breach of trust.

If no notice given, sale good, but tenant for life guilty of breach of trust.

Occasional inconvenience of clause requiring notice.

The necessity to give a month's notice before even a contract is made, will in many cases be found inconvenient, and the Act does not seem to give any authority to the trustees to waive it. In the case of a lease, it has always been usual to vest the leasing powers in the tenant for life without any reference to the trustees, and there seems no reason why a notice to them should be required. As regards sales, the protection afforded by the notice to the persons entitled in remainder is very small, and it will probably be deemed convenient as a general rule to negative the section altogether. It is clear that this can be done under section 57.

Suggestion that clause should be negatived.

There must be at

Section 45 contains a proviso that at the date of the

(*a*) Sect. 45.

(*b*) Sect. 53.

(*c*) Sect. 45, sub-sect. 2. A *bonâ fide* purchaser is not concerned to enquire respecting the giving of notice, but if he has actual knowledge that none has been given, he could not safely proceed.

notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement. If at the time when a tenant for life intends to sell, &c, there is only one trustee, he must appoint, or procure the appointment, of a second one for the purpose of receiving the notice.

least two trustees when the notice is given.

The fact that a tenant for life has assigned or incumbered his life estate does not prevent him from exercising the powers of the Act, but the rights of the assignee or incumbrancer will not be affected without his consent, except that unless he is actually in possession, his consent is not necessary to a lease if made at the best rent, without a fine (*c*).

Powers may be exercised by tenant for life, notwithstanding assignment or incumbrance of his life interest.

The powers given by the Act are cumulative, and in addition to any express power contained in the settlement for the same purposes, but no such express power can be exercised in future without the consent of the tenant for life (*d*).

Powers given by Act are cumulative.

Other limited owners enumerated in sect. 58 of the Act are given the same powers as a tenant for life, and where a tenant for life, or a person having the powers of a tenant for life, is an infant, the trustees of the settlement may exercise them for him; and where the owner in possession of land is an infant, the land is to be deemed settled, and the infant is to be deemed a tenant for life thereof (*e*).

Other limited owners who have powers of tenant for life.

Infants.

When the tenant for life is a married woman, she can, if entitled for her separate use, exercise the powers of the Act alone, but otherwise her husband must concur, and a restraint on anticipation will not prevent her from exercising any of the powers (*f*), and in the case of a lunatic, his committee may, under order of the Lord Chancellor, act for him (*g*).

Married women.

Lunatics.

Where land is subject to a trust for sale, and for investment of the proceeds so that some one is entitled beneficially to the income for life, or other limited interest, the person entitled to the rents and profits of the land until sale has all the powers of a tenant for life

In case of land subject to a trust for sale, beneficiary for life has powers Act.

(*c*) Sect. 50.

(*d*) Sect. 56.

(*e*) Sects. 59, 60.

(*f*) Sect. 61. It is apprehended that a married woman exercising the powers of the Act with the concurrence of her husband under this section need not acknowledge the deed.

(*g*) Sect. 62.

under the Act, and the trust for sale vested in the trustees cannot be exercised without his consent, whether such consent is or is not made necessary by the instrument itself (*i*).

How far form of settlements altered by Act.

The practical result of the above enactments as regards the form of future settlements may be thus stated. Leasing powers will be unnecessary, the powers given by the Act being quite as extensive as those hitherto in use. The powers of sale, exchange, enfranchisement, and partition which have been hitherto conferred on the trustees exerciseable at the request of the tenant for life, will also be discontinued, as if conferred they will be practically useless, being made by the Act subordinate to those conferred on the tenant for life (*j*).

A clause exempting the tenant for life from the duty of giving the notice required by sect. 45 of the Act will in general be introduced, and sect. 11, providing for the capitalizing of a part of the rent on a mining lease, will also, it is probable, be generally negatived, such a provision having been hitherto unusual (*jj*).

Trustees' receipt clause now unnecessary.

A clause enabling the trustees to give receipts for the trust money or funds payable or transferable to them was until lately an essential part of a settlement, whether of real or personal estate, but it may be now safely dispensed with (*k*).

As to powers to appoint new trustees.

The power to appoint new trustees conferred by the Conveyancing Act, 1881 (*l*), is a very complete one, and may, as a general rule, be relied on. If it is intended, as is usually the case, that the power shall be vested in the husband and wife and the survivor of them, this should be so stated in the deed.

Provision for indemnity of trustees unnecessary.

It was formerly usual to insert in settlements a provision for the indemnity and reimbursement of trustees, but this provision, which was never of much value, is now rendered unnecessary by the 22 & 23 Vict. c. 35, s. 31 (*m*).

(*i*) Sects. 56, 63.

(*j*) A power of sale vested in the trustees might be resorted to in the case of the tenant for life wishing himself to purchase part of the settled land, but it will probably be thought not worth while to insert it merely for this purpose.

(*jj*) Other clauses will be found suggested in Precedent No. XXVII. infrà.

(*k*) See 22 & 23 Vict. c. 35, sect. 23; Conveyancing Act, 1881, sect. 36.

(*l*) Sects. 31 to 34.

(*m*) The enactment above referred

Trustees may compound and settle claims, &c.

The Conveyancing Act, 1881, provides, with respect to executorships and trusts created after the 31st December, 1881, that an executor or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to them or him seem expedient, without being responsible for any loss occasioned by any act or thing so done in good faith (*n*).

Solicitor trustee.

If either of the trustees is a solicitor, a clause enabling him to charge for business done by him in relation to the trusts should be inserted.

Settlement of property of infants.

The 18 & 19 Vict. c. 43 (explained as extending to Ireland by the 23 & 24 Vict. c. 83) authorises *infants* in contemplation of marriage, with the sanction of the Court of Chancery, to be given on petition without the institution of a suit (if males, at any time after the age of twenty, and if females, at any time after the age of

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to is as follows: "Every deed, will, or other instrument creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following: that is to say, 'That the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument to reimburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument.'"

(*n*) Sect. 37.

seventeen), to make binding settlements of all or any part of their real or personal property, or property over which they may have any power of appointment. But as to appointments under a power, or any disentailing assurance which may have been executed by the infant tenant in tail under the provisions of the Act, it is provided that in case the infant dies under twenty-one, such appointment or disentailing assurance shall be absolutely void. Before approving a settlement under this Act, the Court will not direct an inquiry as to the propriety of the contemplated marriage (*r*).

Settlement by husband of money of infant wife no longer effectual.

Where the intended wife is an infant and the property proposed to be settled by her is personal estate, it has been hitherto thought unnecessary as a general rule to incur the delay and expense of an application to the Court under the above Act, the covenant of the husband, who would otherwise be entitled to the money in his marital right, being practically sufficient. But since the Married Women's Property Act, 1882, the property cannot be bound by the husband's covenant.

II. *Voluntary settlements, how far valid as against* (1) *purchasers,* (2) *creditors,* (3) *the settlor himself and his representatives.*

27 Eliz. c. 4.

(1) By the stat. 27 Eliz. c. 4, all conveyances, &c., of lands, tenements, or hereditaments, made with the intent to defraud purchasers, and also all conveyances with any clause of revocation at the grantor's pleasure, are made void against subsequent purchasers.

All voluntary settlements fraudulent under above Act.

It has been long settled that all voluntary deeds are to be deemed fraudulent and void within the meaning of the above statute, and it makes no difference that the subsequent purchaser has notice of the prior voluntary conveyance (*s*).

Principle on which it has been so held.

The principle on which voluntary conveyances have been uniformly held to be fraudulent and void as against subsequent purchasers appears to be, that by selling the

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(*r*) *In re* Dalton, 6 De G. M. & G. 201.

(*s*) Doe d. Otley *v.* Manning, 9 East, 59.

property afterwards for a valuable consideration the vendor so entirely repudiates the former voluntary conveyance, and shows his intention to sell, as that it shall be taken conclusively against him and the person to whom he conveyed that such intention existed when he made the voluntary conveyance, and consequently that it was made in order to defeat the purchaser (*t*). This being the principle, it follows that the statute only applies where the voluntary conveyance and the subsequent sale are by the same person, and therefore if A. makes a voluntary conveyance and dies, a sale by the heir of A. will not defeat it (*u*). But a conveyance which is *really* fraudulent, and not merely voluntary, is void against a subsequent purchaser, although the person making the fraudulent conveyance and the person selling may be different (*x*).

Doctrine only applies where settlor and person making voluntary conveyance are the same.

A voluntary conveyance is binding on the grantor and on all persons (other than purchasers for valuable consideration) claiming under him. Consequently, if A. makes two voluntary conveyances, first to B. and then to C., and C. sells for valuable consideration to D., B.'s title is good against D., because after A. had conveyed to B., he had no estate left in him which he could convey to any one but a purchaser for value, and as nothing therefore passed to C., D. could be in no better position (*y*).

Voluntary conveyance good against purchaser from subsequent voluntary grantee.

Again, if a person to whom a voluntary conveyance is made sells and conveys for value, that which was in its creation a voluntary conveyance, and voidable by a purchaser, becomes good and unimpeachable, and the purchaser from such volunteer cannot be disturbed by a subsequent purchaser from the original settlor. It follows that after the execution of a voluntary conveyance a person could not be advised to purchase and take a conveyance of the property from the settlor, as there may have been in the meantime a sale by the person

Purchaser from voluntary grantee cannot be disturbed.

(*t*) *Per* Campbell, C. J., in Doe d. Newman *v.* Rusham, 17 Q. B. 723; 21 Law J. Q. B. 139.

(*u*) Doe d. Newman *v.* Rusham, *ubi suprà.* See also Parker *v.* Carter, 4 Hare, 409.

(*x*) Burrell's case, 6 Rep. 72.

(*y*) See Doe d. Newman *v.* Rusham, *ubi suprà.*

taking under the voluntary deed. And it has been decided that a contract for sale entered into by a person who has executed a voluntary conveyance may be enforced against him, but not by him (*z*).

Marriage a valuable consideration sufficient to support ante-nuptial settlements.

Limitations in favour of collateral relations, *primâ facie* voluntary.

Marriage is a valuable consideration, and consequently a settlement made previously to and in consideration of marriage in favour of the husband and wife and their issue is a settlement for valuable consideration, so as to exclude the operation of 27 Eliz. chap. 4. But a settlement made after marriage, unless in pursuance of a prior agreement, or unless there is some other consideration, is voluntary; so also if a marriage settlement contains limitations in favour of collateral relations or strangers, such limitations are *primâ facie* voluntary (*a*), and so (according to a recent case) is a provision made by an intended husband for his child by a former wife (*b*). But it has been held that an intended wife may stipulate for a provision to be made out of her property for her children by a former marriage, or even for an illegitimate child, and that a settlement to carry into effect such a stipulation is not voluntary (*c*).

Where limitations to collaterals are mixed up with those to children, the whole settlement will be upheld.

If a settlement, whether of the husband's or the wife's lands, contains limitations in favour of strangers to the marriage consideration (including in this expression children of a former or of a subsequent marriage), which are so mixed up with limitations in favour of persons within such consideration that effect cannot be given to the provisions in favour of those within the consideration without giving effect also to those in favour of the strangers, the whole settlement will be upheld (*e*).

(*z*) Buckle *v.* Mitchell, 18 Ves. 100; Smith *v.* Garland, 2 Mer. 123. But see Peter *v.* Nicholls, L. R. 11 Eq. 391.

(*a*) Johnson *v.* Legard, T. & R. 281; Cotterell *v.* Homer, 13 Sim. 506.

(*b*) Price *v.* Jenkins, 4 Ch. D. 483.

(*c*) Newstead *v.* Searles, 1 Atk. 264; Clarke *v.* Wright, 6 H. & N. 849; Gale *v.* Gale, 6 Ch. D. 144. It will be borne in mind that these cases were decided before the passing of the Married Women's Property Act, 1882. As regards persons marrying after the 31st Dec., 1882, it is apprehended that no distinction can be made between a settlement of the wife's property and one by the husband of his own, and that if a provision for the children of a former marriage is voluntary in the one case, it will (when the circumstances do not in other respects differ) be deemed voluntary in the other case also, and *vice versâ*.

(*e*) Clayton *v.* Lord Wilton, 3

A very slight consideration sufficient to support a post-nuptial settlement.

As regards post-nuptial settlements a very slight consideration, *e.g.*, a loan of money made to the settlor by a relative of his wife is sufficient to take a case out of the statute (*f*). And a settlement by husband and wife of the wife's property to her separate use for life with remainder to the husband for life with remainder to the children has been held to be a settlement for valuable consideration, such consideration being the modification by the husband of his life interest in possession, and by the wife of her inheritance (*g*).

Settlement of leaseholds valid.

A settlement of leasehold property to which a liability is attached is a conveyance for valuable consideration (*h*).

13 Eliz. c. 5.

(2) By the stat. 13 Eliz. c. 5 (made perpetual by the 29 Eliz. c. 5), all conveyances, &c., of lands, tenements, or hereditaments, goods or chattels (*i*), made with intent to defeat, hinder, or delay creditors, are made void as against such creditors; but the Act contains a saving clause in favour of purchasers for valuable consideration without notice.

Voluntary conveyance not necessarily void against creditors.

In order to come within this statute a deed must be made with intent to defeat, hinder, or delay creditors. If such an intent is clear, the deed will be void, even if made for valuable consideration (*k*). A voluntary deed will be presumed to be made with intent to defeat, &c., creditors, if that will be its probable effect having regard to the amount of property included in it, and the amount of the settlor's liabilities at the time (*l*). So an advancement made by a person largely indebted at the time will be void under this statute as against creditors (*ll*).

Madd. 302, note; Newstead *v.* Searles, *ubi suprà.*

(*f*) Bayspoole *v.* Collins, L. R. 6 Ch. App. 228. See also Townend *v.* Toker, L. R. 1 Ch. App. 46; *In re* Johnson, 20 Ch. D. 389.

(*g*) Hewison *v.* Negus, 16 Beav. 594; Teasdale *v.* Braithwaite, L. R. 5 Ch. D. 631; *Re* Foster & Lister, *ib.* 6 Ch. D. 87. But as regards property coming under the Married Women's Property Act, 1882, such a settlement would be by the wife alone, and therefore voluntary.

(*h*) Price *v.* Jenkins, 5 Ch. D. 619. But this doctrine does not apply as against creditors under 13 Eliz. c. 5, Ridler *v.* Ridler, 22 Ch. D. 74.

(*i*) It will be observed that while the stat. 27 Eliz. c. 4 applies only to lands and hereditaments, the stat. 13 Eliz. c. 5 applies to goods and chattels also.

(*k*) Holmes *v.* Penney, 3 K. & J. 90.

(*l*) *Per* Kindersley, V.-C., in Jenkyn *v.* Vaughan, 3 Drew. 424; Thompson *v.* Webster, 4 Drew. 632; S. C. on Appeal, 4 De G. & J. 600; Ridler *v.* Ridler, *ubi suprà.*

(*ll*) Christy *v.* Courtenay, 13 Beav. 96; Barruck *v.* McCulloch, 3 K. & J. 110.

Subsequent creditors may come in.

If a deed is set aside as being void against creditors under the statute, the property comprised in it becomes assets for the payment of debts generally, so that subsequent creditors are entitled to participate in it (*m*).

Voluntary settlement may be set aside, if settlor about to engage in hazardous business.

A voluntary settlement may be set aside, although the settlor's assets, irrespective of what is included therein, may be sufficient to pay his debts at the date of the deed, if the settlor contemplated a state of things which might not improbably result in bankruptcy or insolvency, as if he were engaged or engaging in a hazardous or untried business, or was incurring heavy liabilities (*n*); and a voluntary deed may be set aside at the suit of a subsequent creditor, although there may be no creditor whose debt was in existence at the date of the settlement (*o*).

Settlement where life income made determinable on bankruptcy held fraudulent.

A voluntary settlement by a person not then engaged in trade, and who owed no debts, by which money was settled in trust to pay the income to the husband for life or until bankruptcy, &c., with remainder to his wife for life, for her separate use, with remainder to the children, and an ultimate remainder to the settlor, was held fraudulent and void against creditors, the settlor having many years after the settlement engaged in trade and become bankrupt (*q*).

A settlement which is in form voluntary may be proved by extrinsic evidence to have been made for a valuable consideration (*r*).

Provisions of Bankruptcy Act, 1869, as to voluntary deeds.

The rule by which voluntary settlements are void against creditors is extended, in the case of traders, by the Bankruptcy Act, 1869 (*s*), which provides that a voluntary settlement by a trader shall, if the settlor becomes bankrupt within two years from the date of the settlement, be void as against the trustee of the bankrupt, and shall, if he becomes bankrupt within ten years after the date of such settlement, be void against such trustee, unless the parties claiming under

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(*m*) Richardson *v.* Smallwood, Jac. 552.

(*n*) Crossley *v.* Elworthy, L. R. 12 Eq. 158; Mackay *v.* Douglas, L. R. 14 Eq. 106; *Ex parte* Russell, 19 Ch. D. 588.

(*o*) Mackay *v.* Douglas, *ubi suprà*; Taylor *v.* Coenen, 1 Ch. D. 636.

(*q*) *Re* Pearson, 3 Ch. D. 807.

(*r*) Pott *v.* Todhunter, 2 Coll. 76.

(*s*) 32 & 33 Vict. c. 71, sect. 91.

it can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement; and the Act also provides that any covenant or contract by a trader in consideration of marriage for the future settlement upon or for his wife and children of any money or property wherein he had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee in bankruptcy.

It has been held that this enactment applies to settlements executed before as well as after the Act came into operation (*s*), but that it does not apply to a covenant for payment of a sum of money not specifically earmarked; and where a trader covenanted on his marriage to pay a sum of 6000*l.* to the trustees, and became a bankrupt within two years, his trustees were allowed to prove against his estate under the covenant (*t*).

Voluntary covenants and settlements are binding on the settlor if complete, but not otherwise.

(3) Equity will not give its assistance to execute a voluntary contract or covenant in respect of real or personal property (*u*). Every voluntary assignment or gift of property must be complete, in order to bind the settlor, *i.e.*, he must have done everything which according to the nature of the property is necessary to be done on his part (*x*). Thus, if the legal owner of Consols, standing in his own name (*y*), or of Bank shares transferable only by entry in the bank books (*z*), purports to assign such Consols or shares by deed, or if a person possessed of leasehold property purports to assign it by a writing not under seal (*a*), or if the owner of shares

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(*s*) *Ex parte* Dawson, L. R. 19 Eq. 433.

(*t*) *Ex parte* Bishop, L. R. 8 Ch. 718.

(*u*) Pulvertoft *v.* Pulvertoft, 18 Ves. 99; Jefferys *v.* Jefferys, 1 Cr. & P. 138; Meek *v.* Kettlewell, 1 Ph. 342.

(*x*) Milroy *v.* Lord, 4 De G. F. & J. 264.

(*y*) Bridge *v.* Bridge, 16 Beav. 315; Beach *v.* Keep, 18 Beav. 285.

(*z*) Milroy *v.* Lord, *ubi suprà.*

(*a*) Richards *v.* Delbridge, L. R. 18 Eq. 11.

in a colliery signs an entry in the partnership books, to the effect that he agrees to transfer such shares, which entry is not sufficient to pass them according to the partnership articles (*b*), or if the owner of railway stock hands over the certificate of such stock, saying, "these are yours," or using words to that effect (*c*), in each of these cases the intended gift, if in favour of a volunteer, is inoperative. On the other hand, a voluntary assignment by deed of a chose in action not assignable at law (*d*), or of a reversionary interest in stock standing in the name of a trustee (*e*), will be sustained, on the ground that the assignor has done all that he can, having regard to the nature of the property, to divest himself of his interest; nor is it necessary that notice of the assignment shall have been given to the debtor or the trustee, the giving of such notice being an act within the province of the assignee rather than the assignor.

Voluntary declaration of trust good, but instruments void as incomplete assignments not good as declarations of trust.

A voluntary declaration of trust, whether of real or personal property, will be enforced, and as regards personal property such declaration may be either in writing or by a parol (*f*). In some cases it has been sought to sustain as valid declarations of trust, instruments purporting to be assignments, but which are incomplete as such. The principle applicable to such cases has been thus laid down by Turner, V.-C., in *Milroy* v. *Lord* (*g*). "If the settlement is intended to be effectuated by one of the modes to which I have referred (viz., transfer and declaration of trust), the Court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the Court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust (*h*). In accordance with

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(*b*) Heartley *v.* Nicholson, L. R. 19 Eq. 233.

(*c*) Moore *v.* Moore, L. R. 18 Eq. 474.

(*d*) Fortescue *v.* Barnett, 3 M. & K. 36.

(*e*) Kekewich *v.* Manning, 1 De G. M. & G. 176.

(*f*) *Ex parte* Pye, 18 Ves. 150.

(*g*) 4 De G. F. & J. 274.

(*h*) See also Warriner *v.* Rogers, L. R. 16 Eq. 340; Richards *v.* Delbridge, 18 Eq. 11; Moore *v.* Moore, *ib.* 474. The cases of Airey *v.* Hall, this principle, an imperfect assignment of furniture by a husband to his wife by letters was held void in a recent case (*i*).

Duty of solicitor who prepares a voluntary deed.

In order to support a voluntary deed against the settlor, the parties claiming under it must be able to show that he understood what he was doing, and this is particularly the case if the settlor was young or otherwise inexperienced in business at the time when he made the settlement, or if the deed contains unusual provisions (*k*). It has been sometimes supposed to be the duty of the solicitor who prepares a voluntary deed to advise the insertion of a power of revocation in all cases, and that the want of such a power, unless by the express direction of the solicitor, invalidates the deed (*l*). But there is no such general rule. It depends on the circumstances, whether such a power should be recommended or not; in many cases it would be proper, while in others it would defeat the very object for which the deed is executed (*m*). All that the Court has to be satisfied of is that the settlement, whether it contains a power of revocation or not, is the free determined act of the party making it, and the absence of advice as to the insertion of a power of revocation is a circumstance, and a circumstance merely, to be weighed in connection with the other circumstances of the case (*n*); and in a late case it was said that, if a person of full age and sound mind executes a voluntary settlement, he cannot have the deed set aside without giving some substantial reason why the transaction should not stand, and the fact that the deed contains no power of revocation will not throw upon the grantee the onus of supporting it (*o*).

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2 Sm. & Gif. 315; Richardson *v.* Richardson, L. R. 3 Eq. 686; Morgan *v.* Malleson, *ib.* 10 Eq. 475, must be considered as overruled.

(*i*) *Re* Breton's Estate, 17 Ch. D. 416. In this case Hall, V.-C., commented on and declined to follow Baddeley *v.* Baddeley, 9 Ch. D. 113; and Fox *v.* Hawks, 13 Ch. D. 822, as being inconsistent with Milroy *v.* Lord.

(*k*) Cooke *v.* Lamotte, 15 Beav. 235; Prideaux *v.* Lonsdale, 1 D. J. & S. 433; Phillips *v.* Mullings, L. R. 7 Ch. App. 244.

(*l*) Coutts *v.* Acworth, L. R. 8 Eq. 558; Wollaston *v.* Tribe, 9 Eq. 44; Everitt *v.* Everitt, 10 Eq. 405.

(*m*) Prideaux *v.* Lonsdale, 1 D. J. & S. 433; Toker *v.* Toker, 3 D. J. & S. 487; Hall *v.* Hall, L. R. 8 Ch. App. 430.

(*n*) *Per* Turner, L. J., in Toker *v.* Toker, 3 D. J. & S. 491.

(*o*) Henry *v.* Armstrong, 18 Ch. D. 668.

III. *Stamps on settlements.*

Stamps on settlements.

By the 33 & 34 Vict. c. 97, the following stamp duties are made payable under the head of "settlement" in the schedule:—

> Any instrument, whether voluntary, or upon any good or valuable consideration, other than a bonâ fide pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled, or agreed to be settled, in any manner whatsoever.

	£	*s.*	*d.*
For every £100, and also for any fractional part of £100, of the amount or value of the property settled, or agreed to be settled...	0	5	0

Exemption.

Instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment created by a previous settlement, stamped with *ad valorem* duty in respect of the same property, or by will, where probate duty has been paid in respect of the same property as personal estate of the testator.

As settlements frequently contain covenants for payment of an annuity, it will be useful to mention that under the same Act a bond, covenant, or other instrument for payment of an annuity, is charged as follows:—

(1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or

security), or of any sum or sums of money at stated periods, not being interest for any principal sum, secured by a duly stamped instrument, nor rent reserved by a lease or tack:

	£	s.	d.
For a definite and certain period, so that the total amount to be ultimately payable can be ascertained.	The same *ad valorem* duty as a bond or covenant for such total amount.		
For the term of life, or any other indefinite period:			
For every £5, and also for any fractional part of £5 of the annuity or sum periodically payable........	0	2	6

(2) Being a collateral, or auxiliary, or additional or substituted security for any of the abovementioned purposes where the principal or primary instrument is duly stamped:

	£	s.	d.
Where the total amount to be ultimately payable can be ascertained.	The same *ad valorem* duty as a bond or covenant of the same kind for such total amount.		
In any other case:			
For every £5, and also for any fractional part of £5 of the annuity or sum periodically payable	0	0	6

And the Act contains the following provisions relating to stamps on settlements:—

Settlement of policy, or security

Sect. 124. Where any money which may become due or payable upon any policy of insurance, or upon any security not being a marketable security, is settled or agreed to be settled, the instrument whereby such settlement is made or agreed to be made, is to be charged with *ad valorem* duty in respect of such money.

Provided as follows:—

Proviso as to policies.

(1) Where in the case of a policy of insurance no provision is made for keeping up the policy, the *ad valorem* duty is

to be charged only on the value of the policy at the date of the instrument.

(2) If in any such case the instrument contains a statement of such value, and is stamped in accordance with such statement, it is, so far as regards such policy, to be deemed duly stamped, unless or until it is shown that such statement is untrue, and that the instrument is in fact insufficiently stamped.

Settlements when not to be charged as securities.

Sect. 125. (1) An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock, or security, is not to be charged with any further duty by reason of containing provision for the payment or transfer of the same money, stock, or security.

(2) Where any money, stock, or security is settled, or agreed to be settled, by a person who has only a reversionary interest therein, and the instrument whereby such settlement is made, or agreed to be made, contains a covenant by the person entitled in possession to the interest or dividends of such money, stock, or security, for the payment, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of £4 per cent. per annum upon the amount or value of such money, stock, or security, such instrument shall not be charged with any duty in respect of such covenant.

Where several instruments, one only to be charged with *ad valorem* duty.

Sect. 126. (1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of such property exceeds ten shillings, one only of such instruments is to be charged with the *ad valorem* duty.

(2) Where a settlement is made in pursuance of any previous agreement or articles upon which any *ad valorem* settlement duty exceeding ten shillings has been paid in respect of the same property, such settlement is not to be charged with any *ad valorem* settlement duty.

(3) In each of the aforesaid cases, the instruments not chargeable with *ad valorem* duty are to be charged with the duty of ten shillings.

No. I.

OF STOCK BELONGING TO INTENDED HUSBAND.

SETTLEMENT *of a* SUM *of* STOCK *belonging to the intended* HUSBAND, *the* INCOME *to be paid to the* HUSBAND *and* WIFE, *successively for life, and after the death of the* SURVIVOR, *the principal to be for the* ISSUE, *as the* HUSBAND *and* WIFE, *or the* SURVIVOR, *shall appoint, and in default of* APPOINTMENT *for* SONS *attaining twenty-one Years, and* DAUGHTERS *attaining that age or marrying, equally, and in default of issue, for* HUSBAND; HOTCHPOT *clause;* MAINTENANCE, ACCUMULATION, *and* ADVANCEMENT *clauses; Clauses as to* INVESTMENTS *and appointing* NEW TRUSTEES.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*) (*a*), of the third part: WHEREAS a marriage is intended shortly to be solemnised between the said A. B. and the said C. D.: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said A. B. should settle the sum of £—— Consolidated £3 per Cent. Annuities upon the trusts, and in the manner hereinafter expressed, and he has, with a view to such settlement, transferred the said stock into the names of the said E. F., G. H., and I. K., in the books of the Governor and Company of the Bank of England: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED that the said E. F., G. H., and I. K. (hereinafter called "the trustees"), shall stand possessed of the said sum of £—— Consolidated £3 per Cent. Annuities: IN TRUST for the said A. B., until the said intended marriage: AND after the said intended marriage

Recital of intended marriage.

Agreement to settle stock.

Transfer of stock to trustees.

Witnessing part.

Trustees shall stand possessed of stock, in trust for intended husband until marriage.

After marriage to

(*a*) The number of trustees in a settlement varies from two to four. In the above Precedent there are three, but it can be easily adapted to the case of two or four trustees.

OF STOCK BELONGING TO INTENDED HUSBAND.

retain present investment, or change same.

To pay income to husband and wife successively for life,

in trust for the issue of marriage, as husband and wife or survivor shall appoint.

And in default of any appointment for sons attaining twenty-one, and daughters attaining that age or marrying under that age, equally.

Hotchpot clause.

In trust that the trustees (*b*) shall either retain the said stock, or at any time, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, sell the same, and invest the moneys produced by such sale in some or one of the modes of investment hereinafter authorised, with power from time to time with such consent, or at such discretion as aforesaid, to vary the said investments into or for others of the same or a like nature, and shall stand possessed of the said sum of £—— Consolidated £3 per Cent. Annuities, and the investments for the time being representing the same (hereinafter called the trust funds): In trust to pay the income thereof to the said A. B. during his life, and after his decease to the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D.; In trust for such child, children, or remoter issue (*c*) of the said intended marriage, at such age or time, or ages or times (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said A. B. and C. D. shall by any deed or deeds jointly appoint: And in default of such appointment, and so far as any such appointment shall not extend, then as the survivor of them the said A. B. and C. D. shall by any deed or deeds, or by his or her will, appoint: And in default of such appointment, and so far as any such appointment shall not extend, In trust for all the children of the said intended marriage who, being sons, shall attain the age of twenty-one years, or, being daughters, shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for such one child: But so, nevertheless, that no child who or any of whose issue shall take any

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(*b*) It was formerly usual to provide that the trust might be exercised by the survivors and survivor of the trustees, and the executors or administrators of such survivor. As regards the survivors and survivor, this is now provided for by the Conveyancing Act, 1881, sect. 38, and as regards the executors or administrators of the last survivor, it is generally better, if all the trustees die, to appoint new ones under the statutory power.

(*c*) This power is good, although the class is not limited in terms to issue born within the period allowed by the rule against perpetuities, but it must be exercised consistently with that rule. Routledge *v.* Dorrill, 2 Ves. Jr. 357.

OF STOCK BELONGING TO INTENDED HUSBAND.

Direction as to share of infant married daughter.

Maintenance clause.

Accumulation clause.

part of the trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the trust funds, without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the persons or person making such appointment shall thereby direct the contrary: AND if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, IN TRUST for the said A. B., absolutely: AND IT IS HEREBY DECLARED that if after the decease of the survivor of the said A. B. and C. D., any married daughter of theirs shall be under the age of twenty-one years, the trustees may retain her share of the trust funds during her infancy, and pay the income thereof to her or to her husband at their discretion, and the receipt of such infant or of her husband, as the case may be, shall be a sufficient discharge for the same (*d*). [AND IT IS HEREBY ALSO DECLARED that if at the decease of the survivor of the said A. B. and C. D., any child or remoter issue entitled for the time being in expectancy to a share of the trust funds under these presents or under any appointment to be made as aforesaid, shall be under the age of twenty-one years, then and in every such case, and in default of any appointment to the contrary, the trustees may pay and apply the whole or such part as they or he shall think fit of the income of the expectant share of such minor, for or towards his or her maintenance or education, with liberty for the trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof, and shall invest the residue (if any) of the said income, and the resulting income thereof, so as to accumulate at compound interest, to the intent that such accumulations shall be added to the principal share from which the same shall have arisen and follow the destination thereof: BUT the trustees may at any time resort to the accumulations of a preceding year or years, and apply the same for or towards the maintenance or education of any child or remoter issue for the time being presumptively

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(*d*) This clause will be a sufficient authority to the trustees in the event of a daughter marrying under age without having made an effectual settlement under the Infants Settlement Act. See p. 204, *suprà*.

OF STOCK BELONGING TO INTENDED HUSBAND.

Advancement clause

entitled thereto (*e*) :] AND IT IS HEREBY ALSO DECLARED, that the trustees may at any time or times, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, raise any part or parts not exceeding together one moiety of the vested or expectant share of any child or remoter issue of the said intended marriage under these presents, or under any such appointment as aforesaid, and may apply the same for his or her advancement, preferment, or benefit, as the trustees shall think fit : AND IT IS HEREBY ALSO DECLARED (*f*), that all moneys liable to

Investment clause.

(*e*) The maintenance and accumulation clause as inserted within brackets may safely be omitted, and it is accordingly omitted in subsequent Precedents. See p. 203, *suprà.*

(*f*) There is considerable variety of practice as to the range of the power of investment inserted in settlements and wills. Some persons are in favour of a very comprehensive power, confiding in the discretion of the trustees to reject what may appear an unsafe investment, although within the class authorized. On the other hand, a prudent man will often decline to accept a trust which authorizes investments of a speculative character, and such as cannot, as a general rule, be advised as proper for trust money, feeling that, if he has such a power, he may not improbably be requested by a tenant for life, desiring a high rate of interest, to exercise it, and will be thus placed in the unpleasant alternative of either giving offence to his friend, or imperilling the interests of his *cestuis que trust.* On the whole, it is thought that the best form of power is one which embraces a wide range of investments producing fixed rates of interest, and generally considered of a safe character, but which prohibits those of a speculative character and fluctuating value, such as the ordinary stocks or shares of railway companies. The power in the text is recommended for general adoption in the absence of special instructions ; but two other forms are given below, to meet the requirements of those who prefer a very restricted or a very comprehensive power :—

Other forms of power of investment.

1. In or upon any stocks, funds, or securities authorized by law as investments for trust moneys.

2. In or upon any stocks, funds, or securities of or guaranteed by the Government of the United Kingdom or of any British colony or dependency, or of any foreign state, or in or upon the stock, shares, or securities of any railway or other company, whether in the United Kingdom or in any British colony or dependency, or in any foreign country, or upon the securities of any municipal or other corporation or public body, or upon real or heritable or leasehold securities in any part of the United Kingdom, or in any British colony or dependency, or upon the security of any life interest in real or personal property,

OF STOCK BELONGING TO INTENDED HUSBAND.

be invested under these presents may be invested in or upon any stocks, funds, or securities of, or guaranteed by, the Government of the United Kingdom, or of any British colony or dependency, (including the stocks or securities of any railway or other company in India or elsewhere, having a fixed rate of interest thereon guaranteed as aforesaid), or in stock of the Bank of England, or the debentures or debenture stock or guaranteed or preference stock or shares of any railway or other company in Great Britain incorporated by Act of Parliament or Royal Charter, and paying a dividend on its ordinary stock or shares, or upon real or leasehold securities in England or Wales, but not elsewhere, such leasehold securities being held for a term whereof sixty years at least shall be unexpired at the time of such investment, or upon the security of any life interest in real or personal property, together with a policy or policies of assurance on the life of the person for whose life such interest shall be holden: AND in lending money on any mortgage security the trustees may accept whatever title or evidence of title shall appear to them sufficient, and in particular may in the case of leasehold securities waive the production of the lessor's title (*g*), without being answerable for any loss arising thereby; and the trustees may at any time release any part of the property comprised in any mortgage security upon being satisfied that the remaining property comprised therein is a sufficient security for the money owing thereon. [And the trustees may also, if they think fit, lend money on any such security as aforesaid, in conjunction with money advanced by any other person or persons by way of contributory loan, and in such case the security may be taken in the joint names of the several contributories or any two or more of them, or in the joint names of any two or more persons to be nominated in that behalf by the several contributories, or such other arrangement may be made in relation thereto as the trustees

Power to lend on contributory mortgages.

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together with a policy or policies of assurance on the life or lives of the person or persons for whose life or lives such interest is holden.

For a power to invest in purchase of land, see Precedent No. XI. *infrà.*

(*g*) The rules enacted by the Vendor and Purchaser Act, 1874, regulating the obligations and rights of vendor and purchaser, are not in terms extended to mortgagor and mortgagee.

OF STOCK BELONGING TO INTENDED HUSBAND.

Power to appoint new trustees.

Power to solicitor trustee to charge.

may think fit] (*h*). AND IT IS HEREBY ALSO DECLARED (*i*), that the power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall, for the purposes of these presents, be vested in the said A. B. and C. D. during their joint lives, and in the survivor of them during his or her life. AND IT IS HEREBY ALSO DECLARED (*k*), that the said E. F. and any future trustee of these presents, who may be a solicitor, shall be entitled to charge and shall be paid out of the trust premises for all business done by him in relation to the trust premises in like manner as he would have been entitled

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(*h*) This power of lending on contributory mortgages will be inserted or not, as in each case may be thought desirable.

(*i*) It is considered that the statutory power may safely be relied on in ordinary cases, but if it is preferred to insert in the deed an express power the following may be substituted for the clause in the text:—

AND IT IS ALSO DECLARED, that if and so often as any of the trustees hereby appointed, or any future trustee or trustees of these presents shall die, or go to reside abroad, or shall desire to retire from or refuse or become incapable or unfit to act in the trusts of these presents, it shall be lawful for the said A. B. and C. D. during their joint lives, and for the survivor of them during his or her life, and after the decease of such survivor, for the continuing trustees or trustee for the time being of these presents, or if there shall be no continuing trustee, then for the retiring or refusing trustees or trustee, or the executors or administrators of the last acting trustee, to appoint any other person or persons to be a trustee or trustees, in the place of the trustee or trustees so dying, or going to reside abroad, or desiring to retire, or refusing or becoming incapable to act as aforesaid, with liberty upon any such appointment to alter the number of trustees, but so that it be not reduced below two: AND UPON every such appointment the trust funds hereby settled shall be so transferred as to become vested in the new trustee or trustees, either jointly with the continuing trustees or trustee, or solely as the case may require: AND EVERY such new trustee (as well before as after the said trust premises shall have become vested in him) shall have all the powers and authorities of the trustee in whose place he shall be substituted.

(*k*) This clause will be inserted if one of the trustees is a solicitor.

to charge the trustees for the same if not being himself a trustee he had been employed by them to do such business as their solicitor. PROVIDED ALWAYS, and it is hereby lastly declared, that if the said intended marriage shall not be solemnised within twelve calendar months from the date hereof these presents shall be void, and the stock hereby settled shall be re-transferred to the said A. B.

Settlement to be void if marriage is not solemnised within twelve months.

IN WITNESS, &c.

No. II.

SETTLEMENT *of* STOCK *belonging to the intended* WIFE, *the* INCOME *to be paid to the* WIFE *for her life for her separate use, and after her death to the* HUSBAND; TRUSTS *for* ISSUE *and* USUAL CLAUSES; AGREEMENT *for settling other* PRESENT *and* FUTURE PROPERTY *of the* WIFE.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnised between the said A. B. and the said C. D.: AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the sum of £—— Consolidated £3 per Cent. Annuities belonging to the said C. D., and such other present and future property (if any) of the said C. D. as is hereinafter in that behalf mentioned, should be respectively settled upon the trusts and in the manner hereinafter expressed: AND for the purposes of the said intended settlement the said C. D. has transferred the said stock into the names of the said E. F., G. H., and I. K., in the books of the Governor and Company of the Bank of England: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT

Recital of intended marriage.

Agreement for settlement.

Transfer of stock to trustees.

Witnessing part.

OF STOCK BELONGING TO WIFE.

Trustees to hold stock in trust for wife until marriage.

To pay income to wife for life for her separate use without power of anticipation and then to husband for life and after death of survivor for issue.

IS HEREBY AGREED AND DECLARED, that the said E. F., G. H., and I. K. (hereinafter called "the trustees") shall stand possessed of the said sum of £—— Consolidated £3 per Cent. Annuities until the said intended marriage, IN TRUST for the said C. D., and from and after the said marriage, IN TRUST that &c. (*retain stock, or sell and invest, and vary investments, vide suprà*, p. 228), and shall pay the income of the said sum of £—— Consolidated £3 per Cent. Annuities, and the investments for the time being representing the same (hereinafter called "the trust funds"), to the said C. D. (*a*) during her life, and so that during her coverture the same shall be for her sole and separate use, and she shall not have power to dispose thereof in the way of anticipation, and after the decease of the said C. D., shall pay the said income to the said A. B. (if then living) during his life, and from and after the decease of the survivor of the said A. B. and C. D. shall hold the said trust funds, IN TRUST, &c. (*Trusts for issue as husband and wife or survivor shall appoint, and in*

(*a*) It is usual to give the wife, for her separate use, the whole income of property settled by her, but sometimes it is arranged that she shall receive an annual sum only out of such income. In such a case the following trusts of income will be substituted for those in the text:—

To pay annuity to wife during joint lives, and residue of income to husband.

IN TRUST that the trustees shall pay to the said C. D. during the joint lives of the said A. B. and C. D. the annual sum of £—— for her sole and separate use and so that she shall not have power to dispose thereof in the way of anticipation, the said annual sum to be paid by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months next after the solemnization of the said intended marriage; and if the said C. D. shall die on any day not being one of the said half-yearly days of payment, there shall be no apportionment of the current half-yearly payment: AND the trustees shall during such joint lives as aforesaid pay the surplus of the said income to the said A. B.: AND shall after the decease of such one of them the said A. B. and C. D. as shall die first pay the whole of the income of the trust funds to the survivor of them during his or her life: AND after the decease of such survivor shall stand possessed of the trust funds, IN TRUST, &c. (*as in text*).

default of appointment for children, equally—sons at twenty-one and daughters at twenty-one or marriage,—Hotchpot clause, suprà, p. 228): AND if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then IN TRUST for the said C. D. absolutely if she shall survive her now intended coverture: But if she shall die during her now intended coverture then UPON SUCH TRUSTS (*b*) as the said C. D. shall by her will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the person or persons who under the statutes for the distribution of the effects of intestates would on the decease of the said C. D. have been entitled thereto if she had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the same statutes (*c*) (*direction as to share of infant married daughter, and advancement clause*, p. 229): AND IT IS HEREBY AGREED AND DECLARED (*d*) that all real and personal property (if any) not hereinbefore settled, to which the said C. D. at the time of the said intended marriage, or at any time during her now intended coverture, shall be or become entitled, whether in possession, reversion, or otherwise (except jewels, trinkets, ornaments of the person, plate, linen, china, furniture, pictures, prints, books, and articles of the like nature, and except also any legacy or other property acquired at one and the same time, not

In default of issue, then as wife shall by will appoint; and in default of appointment for wife if she survives.

Agreement for settling other present and future property of intended wife.

(*b*) It is not right to omit this testamentary power where the money settled belongs to the intended wife herself, except at her own wish, after having had the matter fully explained to her. But if the money is settled by her father, or some other relation, he may fairly stipulate that she shall not have a power of giving it away from the family, and in such case the power may either be omitted altogether, or a more limited power given. The following is the form of a more limited power, "In trust for such person or persons, being a brother or sister, brothers or sisters, or the issue of a brother or sister, or of brothers or sisters of the said C. D., as she the said C. D., &c."

(*c*) In a case where in a settlement made on the marriage of a ward of Court, the fund was given in default of children as the wife should by will appoint, and in default of appointment to her next of kin, and the wife survived her husband, the settlement was rectified on her unsupported evidence that it was contrary to her intention, by limiting the fund in the event which had happened to her absolutely. Smith *v.* Iliffe, L. R. 20 Eq. 666; see also Cogan *v.* Duffield, *ib.* 789.

(*d*) As to the construction of covenants to settle after-acquired property, see *suprà*, p. 206.

OF STOCK BELONGING TO WIFE.

exceeding in amount or value the sum of £200 (*e*)) shall, so soon as circumstances will admit, and at the cost of the trust estate, be assured and transferred by the said C. D. and all other necessary and proper parties (if any) unto or otherwise vested in the trustees, UPON TRUST that the trustees shall at such time or times, and in such manner as they shall think fit (but as to reversionary property not until it shall fall into possession), sell or call in and convert into money such part or parts of the said property as shall not consist of money or of investments of the nature hereinafter authorized, and shall stand possessed of such part of the said property as shall consist of authorized investments, or of money uninvested, and also of the moneys to arise from such sale, calling in, and conversion as aforesaid, upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the trust funds hereby settled (*f*) : AND in the meantime, and so long as any property hereinbefore directed to be sold shall remain unsold, shall pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the trust funds shall for the time being be payable or applicable under the foregoing trusts (*g*) : AND as regards real property, the trustees may, with the consent in writing of the said A. B. and C. D., or the survivor of them, or after the decease of such survivor, at their own discretion, lease the same while unsold or any part thereof for any term of years not exceeding twenty-one years, to take effect in possession, at rack rent : PROVIDED ALWAYS, that if any property to become vested in the trustees as aforesaid shall consist of an annuity or of the rents or income of real or personal property payable to the said C. D. during her life or the life or lives of any other person or persons only, or for any term or period determinable on her death, or on the death of any other person, such annuity, rents, or income shall not be sold unless the said C. D. shall by writing direct the sale thereof, but the said annuity, rents, or income

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(*e*) £200 is the sum usually fixed, but in many cases a higher sum would appear more reasonable.

(*f*) If the wife only receives an annuity out of the income of the wife's trust funds, add here, "but so as not to increase the said annuity of £—— hereinbefore made payable to the said C. D. during the joint lives of the said A. B. and C. D."

(*g*) Add here, if required, "but so as not to increase the said annuity."

shall, unless and until the same shall be sold, be paid and applied to the person or persons and in the manner to whom and in which the income of the trust funds shall for the time being be payable or applicable under the foregoing trusts (*h*): AND IT IS HEREBY DECLARED, that, &c. (*Investment clause and appointment of new trustees, suprà*, pp. 230—232) : PROVIDED ALWAYS, and it is HEREBY LASTLY DECLARED, that if the said intended marriage shall not be solemnized within twelve calendar months after the date of these presents, these presents shall be void, and the stock hereby settled shall be re-transferred to the said C. D.

OF STOCK BELONGING TO WIFE.

Settlement to be void if marriage not solemnized within twelve months.

IN WITNESS, &c.

No. III.

SETTLEMENT *of a* POLICY *of* ASSURANCE (*a*) *effected on the* LIFE *of the intended* HUSBAND; *Provision enabling him to* PAY *to the* TRUSTEES *a* SUM *equal to the* POLICY, *in which case the* POLICY *is to be held in* TRUST *for him absolutely;* COVENANTS *by the* HUSBAND *for keeping up the insurance.*

SETTLEMENT OF A POLICY OF ASSURANCE EFFECTED ON THE LIFE OF THE INTENDED HUSBAND.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of &c., and I. K., of, &c. (*trustees*), of the third part; WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS the said A. B. is possessed of a policy of assurance on his life for the sum of £——, effected with the —— Assurance Society, dated ——, and numbered —— subject to the payment of the annual premium of £——, AND upon the treaty for the said intended marriage it was agreed that the said A. B. should settle the said policy upon the trusts and in the manner hereinafter expressed:

Parties.

Marriage agreed on.

Agreement to settle policy.

(*h*) See note (*g*), *supra*.

(*a*) See 30 & 31 Vict. c. 144.

SETTLEMENT OF A POLICY OF ASSURANCE EFFECTED ON THE LIFE OF THE INTENDED HUSBAND.

Witnessing part.

Assignment of policy to trustees.

In trust for settlor until marriage and afterwards to receive and invest policy moneys when payable.

NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, THE said A. B. as settlor (*b*) hereby assigns unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"), THE hereinbefore recited policy of assurance, and the said sum of £—— thereby assured, and all other moneys to become payable thereunder by way of bonus or otherwise, TO HOLD the same unto the trustees, IN TRUST for the said A. B. until the said intended marriage, AND FROM AND AFTER the said marriage, UPON TRUST that the trustees shall upon the death of the said A. B. receive the moneys to become payable under the said policy, and with the consent in writing of the said C. D. if then living, or if she shall be then dead, at the discretion of the trustees, invest the said moneys or so much thereof as shall remain after paying the expenses of and incidental to the obtaining payment of the same in or upon, &c. (*Trusts for investment and varying investments, suprà*, p. 228). AND SHALL stand possessed of the said policy moneys, and the investments for the time being representing the same (hereinafter called "the trust funds"): IN TRUST to pay the income thereof to the said C. D., if she shall survive the said A. B., during her life: And after the decease of the survivor of the said A. B. and C. D., IN TRUST, &c. (*Trust for issue as husband and wife or survivor shall appoint, and in default of appointment, for children equally—sons at twenty-one, and daughters at twenty-one, or marriage,—Hotchpot clause,—Ultimate trust in default of issue for husband, suprà*, pp. 228, 229): PROVIDED ALSO, that the trustees may at any time or times with the consent in writing of the said C. D. during her life, or after her decease at their own discretion, raise, &c. (*and direction as to share of infant married daughter, and Advancement clause*, p. 229): AND the said A. B. hereby covenants with the trustees, that he the said A. B. will not at any time do any act or commit any default whereby the said policy of assurance may be rendered void or voidable, and will, in case the said policy or any new policy to be effected as hereinafter mentioned, shall by any means become void, forthwith at his own cost effect a new policy on his life in lieu of such void

Trusts for husband, wife and issue.

Advancement clause.

Covenants by husband to keep up policy;

to effect new policy if it shall become void;

(*b*) These words carry with them an implied covenant for further assurance. See Conveyancing, Act, 1881, sect. 7 (E).

policy, in the names of the trustees in the sum of £—— at least, and will duly and regularly pay the premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policy hereby assigned, and every or any such new policy as aforesaid, and will on demand deliver to the trustees the receipt for every such premium: Provided always that it shall not be obligatory on the trustees to enforce the performance of any of the covenants hereinbefore contained on the part of the said A. B. in reference to the said policy of assurance, unless they shall think fit so to do, nor shall it be considered a breach of trust for the trustees to permit the said covenants to remain unperformed, or to permit any such policy as aforesaid to become void through any means whatever: And it is agreed and declared that if any bonus shall at any time hereafter be declared on the said policy, and an option shall be given to the holder of the said policy either to have the amount of such bonus added to the sum assured by the said policy, or to have the same applied in reduction of the future premiums payable for keeping on foot the said policy, then and in such case the trustees shall exercise such option in such manner as the said A. B. shall direct, and if any such bonus shall be accepted, and the said A. B. shall at any time afterwards request the trustees to surrender the same to the said assurance office in consideration of a reduction of future premiums, then and in every such case the trustees shall comply with such request and act accordingly (*c*): Provided also, and it is hereby agreed and declared, that it shall be lawful for the said A. B. at any time during his life to redeem the said policy of assurance by paying to the trustees the sum of £——, and in such case the said policy shall be re-assigned to the said A. B. at his expense freed and discharged from the trusts, powers, and provisions hereinbefore declared and contained concerning the same, and the trustees shall stand possessed of the said sum of £—— paid to them by the said A. B. as aforesaid upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the moneys to be received by virtue of the said policy of assurance, but so that

SETTLEMENT OF A POLICY OF ASSURANCE EFFECTED ON THE LIFE OF THE INTENDED HUSBAND.

to pay premiums; to deliver receipts.

Proviso relieving trustees from responsibility as to policy.

Power to settlor to accept reduction of premium in lieu of bonus.

Power to husband to pay to trustees a sum of money in redemption of policy.

Trusts of money to be so paid.

(*c*) This proviso must not be considered as a common form in a settlement of a policy of assurance. It is supposed to have been specially stipulated for in this particular case.

SETTLEMENT OF A POLICY OF ASSURANCE EFFECTED ON THE LIFE OF THE INTENDED HUSBAND.

during the joint lives of the said A. B. and C. D., and the life of the survivor of them, every investment or variation of investment of the said sum of £—— be made with their, his, or her consent in writing, and that the income of the said sum of £—— and the stocks, funds, and securities in or upon which the same shall be invested, shall be paid to the said A. B. during his life, and so also that the power hereinbefore contained enabling the trustees to apply moneys for the advancement of any child or remoter issue of the said intended marriage, may be exercised during the joint lives of the said A. B. and C. D., or the life of the survivor of them, by their, his, or her direction in writing (*Investment and appointment of new trustees clauses, suprà*, pp. 230—232): PROVIDED ALWAYS, and it is hereby lastly declared, that if the said intended marriage shall not be solemnized within twelve calendar months from the date of these presents, then and in such case these presents shall be void, and the said policy of assurance shall be re-assigned to the said A. B. for his absolute use.

Settlement to be void if marriage not solemnized within twelve-months.

IN WITNESS, &c.

No. IV.

APPOINTMENT OF SHARE TO DAUGHTER.

APPOINTMENT *by* FATHER *and* MOTHER *to a* DAUGHTER *of a* SHARE *of* SETTLED PERSONAL ESTATE *in* CONTEMPLATION *of* MARRIAGE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, M. D., of, &c., and N., his wife (*father and mother of intended wife*), SEND GREETING: WHEREAS by an indenture dated, &c., and made between, &c. (being the settlement made in contemplation of the marriage then intended, and which was shortly afterwards solemnised, between the said M. D. and N., his wife, then N. O.), it was agreed and declared that the said (*trustees of that settlement*) should stand possessed of the trust funds therein mentioned, upon the trusts therein declared during the lives of the said M. D. and N. O. and the life of the survivor of

Recital of settlement on marriage of father and mother of intended wife.

them, and after the decease of such survivor, IN TRUST for all or such one or more of the children and remoter issue of the said intended marriage, at such ages or times, age or time, in such shares, if more than one, upon such conditions, and in such manner, as the said M. D. and N. O. should by any deed or deeds jointly appoint: AND WHEREAS the funds subject to the trusts of the said indenture of settlement now consist of the following particulars (that is to say), the sum of £—— Consolidated £3 per Cent. Annuities standing in the names of W. X. and Y. Z., the present trustees of the said indenture, in the books of the Governor and Company of the Bank of England, and the sum of £—— sterling invested on mortgage of real estate in the names of the same trustees: AND WHEREAS there are five children now living of the said M. D. and N., his wife: AND WHEREAS a marriage is intended shortly to be solemnized between C. D. (one of the said children) (*a*) and A. B., of &c. Esquire: AND WHEREAS the said M. D. and N., his wife, are desirous of making such appointment to or in favour of the said C. D. as is hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said M. D. and N., his wife, in exercise of the power for this purpose given to them by the said indenture of settlement as aforesaid, and of all other powers (if any) enabling them in this behalf, hereby appoint, that if the said intended marriage shall be solemnized before the expiration of twelve calendar months from the date of these presents, the trustees for the time being of the said indenture of settlement shall, from and after the decease of the survivor of the said M. D. and N., his wife, stand possessed of one equal fifth part or share of and in the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture of settlement, IN TRUST for the said C. D., absolutely: [PROVIDED ALWAYS that if the said C. D. shall die under the age of twenty-one years without leaving issue, the appointment hereby made shall be void (*b*).]

APPOINTMENT OF SHARE TO DAUGHTER.

Present state of settled trust funds.

That there are five children.

Intended marriage of daughter one of such children.

Witnessing part.

Father and mother appoint one-fifth of settled trust funds to intended wife.

IN WITNESS, &c.

(*a*) Add here, if the daughter is an infant, "who is of the age of —— years."

(*b*) It is suggested that, having regard to the new law, the above proviso should be inserted, where the daughter is an infant, and her share is not intended to be settled with the sanction of the Court under the Infant Settlement Act.

No. V.

REVERSIONARY PERSONAL ESTATE AND POLICY.

SETTLEMENT *of* REVERSIONARY PERSONAL *estate* APPOINTED *to the intended* WIFE *by the last Precedent and of a* POLICY *of* ASSURANCE *on the life of the intended* HUSBAND; *The* FATHER *of intended Wife* COVENANTS *to pay an* ANNUAL SUM *until her property falls into possession.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., spinster, one of the daughters of M. D., of, &c., Esquire, and N., his wife (*intended wife*), of the second part, the said M. D., of the third part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the fourth part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS under or by virtue of an indenture dated, &c., and made, &c. (being a settlement made previously to the marriage of the said M. D. and N., his wife, then N. O.), and a deed poll under the hands and seals of the said M. D. and N., his wife, bearing even date with these presents, the said C. D. will upon her said marriage, if the same takes place within twelve calendar months from the date of these presents, become entitled in reversion expectant upon the decease of the survivor of the said M. D. and N., his wife, to one equal fifth part or share of the trust funds subject to the trusts of the said indenture of settlement, and which trust funds now consist of the sum of £—— Consolidated £3 per Cent. Annuities standing in the names of W. X. and Y. Z. (the present trustees of the said indenture), in the books of the Governor and Company of the Bank of England, and a sum of £—— invested on mortgage of real estate in the names of the same trustees: AND WHEREAS the said A. B. &c. (*recite policy, suprà*, p. 237): AND WHEREAS upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, the said C. D., as settlor (*a*), hereby assigns unto the said E. F., G. H., and I. K.

Recital of intended marriage.

That intended wife is entitled to reversionary property.

Agreement for settlement.

Witnessing part.

(*a*) The words "with the privity of the said A. B." which were formerly

REVERSIONARY PERSONAL ESTATE AND POLICY.

(hereinafter called "the trustees"), ALL THAT the one-fifth part or share to which the said C. D. will, upon her said marriage, become entitled in reversion expectant as aforesaid of and in the said sum of £—— Consolidated £3 per Cent. Annuities, and the said sum of £—— invested upon mortgage security respectively, or other the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture of settlement of the —— day of ——: TO HOLD the same unto the trustees, UPON TRUST that they shall require the transfer or payment thereof to them when and so soon as the same shall fall into possession, and shall either retain the same in the then state of investment thereof (if any), or with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees convert the same or any part thereof into money, and shall, with such consent or at such discretion as aforesaid, invest the moneys which shall come to their hands by the ways and means aforesaid in &c. (*Trusts for investment, and varying investments, suprà*, p. 228), and shall stand possessed of the said part or share of trust funds hereby assigned and the investments representing the same (hereinafter called "the wife's trust funds"): IN TRUST to pay the income thereof to the said C. D. during her life for her separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation, and after her decease, IN TRUST to pay the said income to the said A. B., in case he shall survive the said C. D., during his life, and after the decease of the survivor of the said A. B. and C. D. upon the trusts hereinafter declared concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said intended marriage, the said A. B. as settlor hereby assigns unto the trustees, THE hereinbefore recited policy of assurance, and the said sum of £—— thereby assured, and all other moneys to become payable thereunder by way of bonus or otherwise, TO HOLD the same unto the trustees, UPON TRUST that they shall, upon the death of the said A. B., receive the moneys assured by and to become payable under the said policy, and shall out of the said moneys in the

Intended wife assigns her reversionary share of trust funds to trustees.

Upon trust to require transfer of same when it falls into possession, and to invest.

To pay income to intended wife for life for her separate use without power of anticipation, and after her decease to intended husband for life.

Assignment of policy to trustees

upon trust to receive the policy moneys,

appropriate, are now omitted, there being since the recent act no more necessity for the consent of the husband to the wife's assignment than for the wife's to the husband's.

and after paying expenses to invest, and pay income to wife for her life.

Trusts for issue.

Power to trustees to apply income or corpus of trust fund in keeping up policy.

Proviso for indemnity of trustees in respect of policy.

first place pay the expenses of and incidental to the obtaining payment thereof, and shall invest the residue of the said moneys in some or one of the modes of investment hereinafter authorized, with power from time to time, with the consent in writing of the said C. D. if living, and after her death at the discretion of the trustees, to vary such investments into or for others of the same or a like nature, and shall pay the income arising from such investments to the said C. D. during her life if she shall survive the said A. B.: AND IT IS HEREBY DECLARED that after the decease of the survivor of the said A. B. and C. D., the trustees shall stand possessed of the said policy moneys, and the investments representing the same (hereinafter called "the husband's trust funds"), and also of the wife's trust funds: IN TRUST for, &c. (*Trusts for issue of intended marriage, as husband and wife or survivor shall appoint, and in default of appointment for children equally—sons at twenty-one, and daughters at twenty-one or marriage, Hotchpot clause, suprà*, p. 228): AND if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the husband's trust funds, IN TRUST for the said A. B. absolutely, and as to the wife's trust funds, IN TRUST, &c. (*for wife or her appointees by will or next of kin, direction as to share of infant married daughter and advancement clause, suprà*, p. 229): AND &c. (*covenant by husband to keep up policy, suprà*, p. 229): PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for the trustees at their discretion at any time or times to apply the income of any part of the trust funds for the time being subject to the trusts of these presents, or (if necessary) any part of the principal thereof, in or towards the payment of any sums which may be required for keeping on foot the said policy hereby assigned, or for effecting or keeping on foot any such new policy or policies as aforesaid, by reason of any breach of the covenant of the said A. B. hereinbefore in that behalf contained: PROVIDED ALSO, and it is hereby declared, that it shall not be obligatory on the trustees to enforce the performance of any of the covenants hereinbefore contained on the part of the said A. B. in reference to the said policy of assurance, nor to apply any part of the income or principal of the said trust funds in or towards the keeping on foot or effecting any such policy as aforesaid, unless the trustees shall think fit so to do, nor shall it be considered a breach of trust for the trustees to permit the said covenants to remain unperformed, or to permit any such policy as aforesaid to become void through any means whatsoever: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said intended marriage, the said M. D. hereby covenants with the trustees that he the said M. D., his heirs, executors, or administrators will during the joint lives of the said M. D. and N., his wife, and the life of the survivor of them, if the said A. B. and C. D., or either of them, or any issue of the said intended marriage, shall so long live, pay to the trustees the annual sum of £——, by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months next after the solemnization of the said intended marriage, UPON TRUST that the said annual sum of £—— shall be paid and applied by the trustees to the person or persons and in the manner to whom and in which the income of the wife's trust funds would for the time being be payable or applicable under the trusts hereinbefore declared if the same had fallen into possession (*Investment clause, suprà*, p. 231): [AND IT IS HEREBY DECLARED that the trustees of these presents may approve of and allow the accounts of the trustees for the time being of the hereinbefore recited indenture of settlement, and also the accounts of any other trustees or persons having in their possession or under their control or being otherwise liable to account for any property of the said C. D. hereby agreed to be brought into settlement, and may give and execute to such trustees and other persons as aforesaid valid and effectual releases in respect of the said share hereby assigned by the said C. D. or in respect of any other property of her the said C. D. hereby agreed to be brought into settlement, and if any question shall arise with respect to the amount or value of the said share or other property or otherwise in relation thereto, the trustees of these presents may arrange and settle every or any such question under the advice of counsel or otherwise in such manner as they shall in their absolute discretion think fit, without being answerable for any loss arising thereby (*c*)] (*Appointment of new trustees clause, suprà*, p. 232).

Covenant by father of intended wife to pay annual sum to trustees

Power to trustees to settle accounts.

IN WITNESS, &c.

(*c*) The clause in brackets may be safely dispensed with. See Conveyancing Act, 1881, sect. 37.

No. VI.

BY HUSBAND AND WIFE, LATTER BEING AN INFANT.

SETTLEMENT *by intended* HUSBAND *and* WIFE, *the latter being an* INFANT, *containing the same provisions as the* LAST PRECEDENT, *except that the* LIFE INTEREST *of* WIFE *in the* HUSBAND'S PROPERTY *is made* CONDITIONAL *on her* CONFIRMING *settlement when she comes of age.* COVENANT *by* HUSBAND *to* CONFIRM *same, if he survives wife and becomes entitled as her* ADMINISTRATOR *or under her* WILL *or otherwise* (*a*).

Parties

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c., being an infant of the age of —— years, or thereabouts, of the second part, and E. F., &c. (*trustees*), of the third part. (*Recitals, and operative parts and trusts and provisions as in last Precedent, down to the end of the ultimate trusts of the husband's and wife's trust funds in case of no issue, and then add*): PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that the life interest hereinbefore given to the said C. D. in the husband's trust funds in the event of her surviving the said A. B. is upon condition that she shall confirm this settlement so far as regards the part or share of trust funds hereby expressed to be assigned by her, and shall execute a proper deed for that purpose within six calendar months after the day on which she shall attain the age of twenty-one years; AND if she shall refuse or neglect so to do for the space aforesaid, then and in such case the trusts and provisions hereinbefore declared and contained concerning the husband's trust funds shall, after the death of the said A. B., take effect in all respects as if the said C. D. had died in his lifetime: AND the said A. B. hereby covenants with the trustees that if the said C. D. shall die under the age of twenty-one years, or if, after having attained that age, she shall refuse or neglect to confirm this settlement in manner

Proviso that wife's life interest in husband's money is conditional on her confirming settlement when she comes of age.

Covenant by husband to confirm settlement as regards wife's money if he becomes entitled to it

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Valid settlement cannot be made without sanction of Court where intended wife is an infant.

(*a*) Since the Married Women's Property Act, 1882, a binding settlement of the wife's property cannot be made without the sanction of the Court under the Infant Settlement Act (see p. 216, *suprà*, Precedent No. XIV., *infra*). But where the money proposed to be settled is of small amount, the parties will often object to incur the expense and delay of an application to the Court, and will be satisfied with the best settlement that can be made by the parties themselves without such sanction.

BY HUSBAND AND WIFE, LATTER BEING AN INFANT.

aforesaid, and if in either of the above mentioned cases the said A. B. shall as her administrator, or under her will, or by any act of hers *inter vivos*, become entitled to the money and property hereby expressed to be assigned by her, or any part thereof, then and in such case he the said A. B. will forthwith confirm this settlement as regards the money and property to which he shall become entitled as aforesaid, and will, at the cost of the trust estate, execute such deed or deeds as shall be requisite and proper for that purpose: (*The remainder of this Precedent will be the same as the last Precedent, except that the covenant by father of C. D. to pay annual sum will be followed by this proviso*): PROVIDED ALWAYS that the said annual sum of £ —— shall cease to be payable at the expiration of six calendar months computed from the day when the said C. D. shall attain the age of twenty-one years, or if she shall die under that age then from the day of her death, unless in the meantime this settlement, so far as regards the part or share of trust funds hereby expressed to be assigned by the said C. D., shall have been duly confirmed by her or by the said A. B. pursuant to his foregoing covenant in that behalf, as the case may require.

as administrator or otherwise.

Proviso that annual sum payable by wife's father is subject to similar condition.

No. VII.

DEED OF CONFIRMATION *by* WIFE *on attaining Twenty-one, to be indorsed on last Precedent.*

CONFIRMATION BY WIFE ON ATTAINING TWENTY-ONE.

KNOW ALL MEN BY THESE PRESENTS, that I, the within-named C. D. (now C. B., the wife of the within-named A. B.) having attained the age of twenty-one years on the —— day of —— last, do hereby confirm the settlement made by the within-written indenture so far as regards the part or share of trust funds thereby expressed to be assigned by me; To the end and intent that the within-written indenture shall take effect in all respects as if I had been of the full age of twenty-one years at the time of the execution thereof.

Confirmation by wife of settlement.

IN WITNESS, &c.

No. VIII.

APPOINTMENT AND SETTLEMENT BY SAME DEED.

APPOINTMENT *by* PARENTS *to* TRUSTEES *at the request of the intended* WIFE *the object of the power, and* SETTLEMENT *of the appointed money by one and the same deed* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN M. D., of, &c., and N., his wife (*father and mother of intended wife*), of the first part, C. D., of, &c. (*intended wife*), of the second part, A. B., of, &c. (*intended husband*), of the third part, and E. F., of, &c., G. H., of, &c., I. K., of, &c. (*trustees*), of the fourth part (*Recitals of settlement on marriage of father and mother, of present state of trust funds, that wife is one of children of said marriage, and of intended marriage, as in precedent* No. IV.): AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the said M. D. and N., his wife, should appoint one-fifth part of the said trust funds as the share of the said C. D., and that the same should be settled by the said C. D. upon the trusts and in the manner hereinafter expressed, AND it was also agreed, that the appointment should be made directly to the trustees of the settlement intended to be hereby made at the request of the said C. D. and of the said A. B.: NOW THIS INDENTURE WITNESSETH, that the said M. D. and N., his wife, in exercise, &c. (*of power, suprà*, p. 241), do hereby, at the request of the said C. D. (testified by her executing these presents), appoint that if the said intended marriage between the said A. B. and C. D. shall take place within twelve calendar months from the date hereof, the trustees for the time being of the hereinbefore recited indenture of settlement shall, upon the decease of the survivor of them the said M. D. and N., his wife, pay or transfer one equal fifth part or share of and in the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture to the said E. F., G. H., and

Recital of agreement for appointment and settlement.

Witnessing part.

Appointment of share to trustees at the request of the object of the power.

(*a*) An appointment may be made by the direction of an object of the power to trustees of a settlement on her marriage. Such an appointment is treated, first, as an appointment to the object; and, secondly, a settlement by such object. It is usual to have two deeds; but to save expense the plan of one deed is sometimes adopted.

I. K. (hereinafter called "the trustees"): Upon trust that they shall require the transfer or payment to them of the said part or share hereby appointed when and so soon, &c. (*Trusts to require transfer and to invest, and subsequent trusts, as in Precedent No. V.*).

APPOINTMENT AND SETTLEMENT BY SAME DEED.

Declaration of trusts.

IN WITNESS, &c.

No. IX.

TRANSFER *by intended* HUSBAND *of* MORTGAGE DEBT *and* SECURITIES *to* TRUSTEES *in contemplation of a* MARRIAGE, *and to the intent that the* MORTGAGE DEBT *may be settled, and the Trusts thereof be declared by a* SETTLEMENT *of even date.*

TRANSFER BY INTENDED HUSBAND OF MORTGAGE DEBT TO TRUSTEES OF INTENDED SETTLEMENT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS by an indenture, &c. (*date and parties*), a farm and lands known as ——, situate in the parish of ——, in the county of ——, in the said indenture more particularly described, were conveyed by the said (*mortgagor*) unto and to the use of the said A. B. in fee simple by way of mortgage to secure payment to him of the sum of £——, with interest thereon, which principal sum still remains owing, but all interest for the same has been duly paid up to the last half-yearly day for payment thereof (*a*).

Recite mortgage to intended husband.

(*a*) Instead of reciting the mortgage deed, the transfer might be described as supplemental to it, thus:

"THIS INDENTURE, &c. (*date and parties as in the text*), and supplemental to an indenture dated, &c., and made, &c., being a mortgage in fee simple of a farm known as ——, situate in the parish of ——, in the county of ——, for securing payment to the said A. B. of the sum of £——, with interest thereon, which principal sum still remains owing," &c. (*as in the text*).

Little if anything is gained in point of brevity by this plan, and there seems no sufficient reason for using it in preference to a short recital, such as is inserted in the Precedent in the text.

TRANSFER BY INTENDED HUSBAND OF MORTGAGE DEBT TO TRUSTEES OF INTENDED SETTLEMENT.

Agreement for marriage.

Agreement for settlement of sum secured on mortgage.

Witnessing part.

Assignment of mortgage debt and interest.

To hold same in trust for husband until marriage.

After marriage, upon trusts of deed of even date.

Conveyance by intended husband of hereditaments to trustees, subject to subsisting equity of redemption.

And whereas a marriage is intended shortly to be solemnized between the said A. B. and C. D.: And whereas upon the treaty for the said intended marriage it was agreed that the said principal sum of £——, secured by the hereinbefore recited indenture, and the interest thereof, and the securities for the same, should be transferred to the said E. F., G. H., and I. K., upon the trusts and in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage, the said A. B. as settlor hereby assigns unto the said E. F., G. H., and I. K., the said principal sum of £——, secured by the hereinbefore recited indenture, and all interest due and to become due for the same: And the benefit of all securities for the same: To hold the same unto the said E. F., G. H., and I. K., In trust for the said A. B., until the solemnization of the said intended marriage, And from and after the solemnization thereof, upon such trusts, and with and subject to such powers and provisions as are expressed and declared of and concerning the same by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between (*parties*): AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and in consideration of the said intended marriage, the said A. B. as settlor hereby conveys unto the said E. F., G. H., and I. K., All and singular the hereditaments and premises comprised in and conveyed by the hereinbefore recited indenture, or expressed so to be: To hold the same unto and to the use of the said E. F., G. H., and I. K., in fee simple, subject to such right or equity of redemption as is now subsisting therein, under or by virtue of the said recited indenture (*Clause as to appointing new trustees, suprà*, p. 232).

In witness, &c.

No. X.

TRANSFER *by intended* WIFE *of* MORTGAGE DEBT *and* SECURITIES *to* TRUSTEES *upon the trusts to be declared by a* SETTLEMENT *of even date, by indorsement on mortgage.*

TRANSFER BY INTENDED WIFE OF MORTGAGE DEBT TO TRUSTEES.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the within named C. D. (*intended wife*) of the first part, A. B., of, &c. (*intended husband*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part, WITNESSETH, that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said C. D. as settlor hereby assigns, &c. (*as in last Precedent, substituting "the within written indenture" for "the hereinbefore recited indenture"*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said C. D. as settlor, with the privity of the said A. B., hereby conveys, &c. (*Conveyance of mortgaged hereditaments to E. F., G. H., and I. K., subject to equity of redemption, as in last Precedent, substituting as above*).

Intended wife transfers mortgage debt to trustees as joint tenants, and conveys mortgaged hereditaments to them subject to equity of redemption.

IN WITNESS, &c.

No. XI.

SETTLEMENT *by intended* HUSBAND *of a* MORTGAGE DEBT *and by intended Wife of* PERSONAL ESTATE *in* POSSESSION *and* REVERSION; TRUSTS *to pay the* INCOME *to the* WIFE *and* HUSBAND *successively for life*; *Usual* TRUSTS *and* PROVISIONS; POWER *to* INVEST *in* PURCHASE *of* LAND.

PERSONALTY IN POSSESSION AND REVERSION.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c.

PERSONALTY IN POSSESSION AND REVERSION.

Recite agreement of marriage.

Fortune of intended husband and wife respectively.

(*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS the said A. B. is entitled to a sum of £—— secured on mortgage of freehold hereditaments situate at ——, and bearing interest after the rate of £4 per cent. per annum, which mortgage was effected by an indenture, &c. (*date and parties*): AND WHEREAS the said C. D. is entitled in possession to the stocks, funds, shares and securities mentioned in the schedule hereunder written: AND WHEREAS under or by virtue of, &c. (*Recite that C. D. will on her marriage become entitled in reversion to one-fifth of settled trust funds, suprà*, p. 242): AND WHEREAS upon the treaty for the said intended marriage, it was agreed that such settlement should be made as hereinafter expressed: AND WHEREAS in part pursuance of the said agreement by an indenture bearing even date with these presents the said A. B. has assigned the said principal sum of £—— and the interest thereof unto the said E. F., G. H., and I. K., IN TRUST for the said A. B. until the said intended marriage shall be solemnized, and after the solemnization thereof upon such trusts and with and subject to such powers and provisions as are expressed and declared concerning the same by an indenture therein mentioned (meaning these presents): AND WHEREAS in further pursuance of the said agreement the stocks, funds, shares and securities mentioned in the schedule hereunder written have been transferred unto or otherwise vested in the said E. F., G. H., and I. K.: NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH and declares (*d*) as follows:—

Agreement for settlement.

Transfer of mortgage to trustees,

and of stock to trustees.

1. THE said C. D., as settlor, hereby assigns unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"),

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Observations on the plan of drawing deeds in paragraphs.

(*d*) This and the subsequent Precedents of Settlements are prepared on the paragraph plan, which has been for some time adopted in Acts of Parliament, equity pleadings, and many other legal and official documents, and is coming into gradual use with conveyancers. It presents obvious advantages as regards perspicuity and facility for convenient arrangement, and seems particularly, adapted to such instruments as settlements, whether of real or personal estate.

The solicitor will find that a deed prepared in paragraphs facilitates both the preparation and the examination of an abstract, particularly if the following recommendations are adopted—(1) The deed should be engrossed

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Wife assigns reversionary share to trustees.

All, &c. (*assignment of reversionary share in trust funds, suprà*, p. 243): To hold the same unto the trustees, who shall stand possessed thereof, and also of the stocks, funds, shares and securities comprised in the schedule hereunder written, In trust for the said C. D. until the said intended marriage shall be solemnized, And from and after the solemnization thereof, Upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Trustees to require transfer, &c., of reversionary share when it falls into possession, and to retain investments or vary same.

2. The trustees shall require the transfer or payment to them of the part or share of trust funds hereinbefore assigned when and so soon as the same shall fall into possession, and shall, as to the stocks, funds, shares and securities comprised in the schedule hereto, and the said sum of £—— secured upon mortgage as aforesaid from and after the said intended marriage, and as to the said part or share of trust funds from and after the falling into possession thereof, either retain the same respectively in their present state of investment, or, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, sell, call in and convert into money the same or any part thereof, and shall, with such consent or at such discretion as aforesaid, invest the moneys to arise from every or any such sale, calling in and conversion as aforesaid, in some or one of the modes of investment hereinafter authorized, with power for the trustees, with such consent or at such discre-

bookwise; (2) If the deed is a long one, it would be convenient to insert in the margin of each clause a short note, stating its purport, but such note should not be allowed to control its interpretation, and a clause to that effect should be added; (3) The abstract should state the number of clauses which the abstracted deed contains; it should also set out fully those which are material, and as to those which are immaterial, either the effect (which might be copied from the marginal notes, if any) should be stated, or it might be stated generally, "clauses — to — do not relate to the subject of this abstract." A statement of this kind would attract the attention of the person who perused the abstract, and the person who examines it would ascertain its correctness. There would be no danger, as at present, of a material clause being altogether overlooked.

The first ten precedents of settlements are retained in the non-paragraph form for the convenience of those who may prefer it. Any of such precedents may be readily converted into a paragraph deed, and, on the other hand, any of the paragraph deeds may be readily converted into a non-paragraph deed, by omitting the numbers, and adding the appropriate words, "And it is hereby also agreed and declared," &c., before each clause.

PERSONALTY IN POSSESSION AND REVERSION.

tion as aforesaid, to vary such investments into or for others of the same or a like nature. THE said sum of £——, secured upon mortgage as aforesaid, and the investments for the time being representing the same are hereinafter referred to as "the husband's trust funds," and the stocks, funds, shares and securities comprised in the schedule hereto, and the said part or share of trust funds hereinbefore assigned, and the investments for the time being representing the same respectively, are hereinafter referred to as "the wife's trust funds."

Income during joint lives to go to husband and wife respectively and then to survivor, and after death of survivor principal to go to issue in usual way.

3. THE trustees shall during the joint lives of the said A. B. and C. D. pay the income of the husband's trust funds to the said A. B., and the income of the wife's trust funds to the said C. D., for her sole and separate use, and so that she shall not have power to dispose thereof in the way of anticipation, and after the decease of such one of them the said A. B. and C. D. as shall die first, shall pay the income of all the said trust funds to the survivor of them during his or her life, and after the decease of such survivor, shall stand possessed of all the said trust funds, IN TRUST for such child, children, or remoter issue of the said intended marriage at such ages or times, or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said A. B. and C. D. shall by any deed or deeds jointly appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, then as the survivor of them the said A. B. and C. D. shall by any deed or deeds, or by his or her will, appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said intended marriage who, being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for such one child: BUT so, nevertheless, that no child who or any of whose issue shall take any part of the trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the trust funds, without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the persons or

Hotchpot clause.

person making such appointment shall thereby direct the contrary: And if there shall be no child of the said intended marriage who, being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the husband's trust funds, In trust for the said A. B., absolutely, And as to the wife's trust funds, In trust for the said C. D. absolutely, if she shall survive her now intended coverture: But if she shall die during her now intended coverture, then Upon such trusts as the said C. D. shall by her will, appoint; And in default of such appointment, and so far as any such appointment shall not extend, In trust for the person or persons who, under the statutes for the distribution of the effects of intestates, would on the decease of the said C. D. have been entitled thereto if she had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the same statutes.

PERSONALTY IN POSSESSION AND REVERSION.

Ultimate trust of husband's trust funds for husband, and of wife's trust funds for wife or her appointees by will or next of kin.

4. If after the decease of the survivor of the said A. B. and C. D., any married daughter of theirs shall be an infant, the trustees may, during the infancy of such daughter, retain her share of the trust funds hereby settled, and pay the income thereof to her or to her husband at their discretion; and the receipt of such daughter or of her husband, as the case may be, shall be a sufficient discharge for the same.

Direction as to share of infant married daughter.

5. The trustees may at any time or times at the request in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees raise any part or parts not exceeding together one moiety of the vested or presumptive share of any child or grandchild of the said intended marriage under these presents, or under any such appointment as aforesaid, and apply the same for his or her advancement, preferment, or benefit in such manner as the said A. B. and C. D. or the survivor of them shall direct or the trustees shall think fit.

Advancement clause.

6. It is agreed that all real and personal property (if any) not hereinbefore settled, to which the said C. D., at the time of the said intended marriage, or at any time during her now intended coverture, shall be or become entitled whether in possession, reversion, or otherwise (except jewels, trinkets,

Agreement to settle other property of wife.

PERSONALTY IN POSSESSION AND REVERSION.

ornaments of the person, plate, linen, china, furniture, pictures, prints, books, and other articles of the like nature, and except also any legacy or other property acquired at one and the same time not exceeding in amount or value the sum of £200), shall, so soon as circumstances will admit, and at the cost of the trust estate, be assured and transferred by the said C. D. and by all other necessary and proper parties (if any) unto or otherwise vested in the trustees UPON TRUST that they shall at such time or times, and in such manner as they shall think fit (but as to reversionary property not until it shall fall into possession), sell, call in, and convert into money such part of the said property as shall not consist of money or of investments of the nature hereinafter authorized, and shall stand possessed of such part of the said property as shall consist of investments of the nature hereinafter authorized or of money uninvested, and also of the moneys to arise from such sale, calling in, and conversion as aforesaid, upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the wife's trust funds: AND in the meantime, and so long as any property hereinbefore directed to be sold shall remain unsold, shall pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the wife's trust funds shall for the time being be payable or applicable under the foregoing trusts [AND as regards real property the trustees may with the consent in writing of the said A. B. and C. D. or the survivor of them and after the decease of such survivor at their own discretion lease the same while unsold, or any part thereof, for any term of years not exceeding twenty-one years to take effect in possession at rack rent]: PROVIDED ALWAYS, that if any property to become vested in the trustees as aforesaid shall consist of an annuity or of the rents or income of real or personal property payable to the said C. D. during her life or the life or lives of any other person or persons only, or for any term or period determinable on her death, or on the death of any other person, such annuity, rents, or income shall not be sold unless the said C. D. shall by writing direct the sale thereof, but the said annuity, rents, or income shall, unless and until the same shall be sold, be paid and applied to the person or persons and in the manner to whom and in which the income of the wife's trust funds shall for the time being be payable or applicable under the foregoing trusts.

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Investment clause.

7. ALL moneys (*e*) liable to be invested under these presents may be invested in or upon any stocks, funds, or securities of or guaranteed by the Government of the United Kingdom or of any British colony or dependency (including the stocks or securities of any railway or other company in India or elsewhere, having a fixed rate of interest thereon guaranteed as aforesaid), or in stock of the Bank of England, or the debentures or debenture stock or guaranteed or preference stock or shares of any railway or other company in Great Britain incorporated by Act of Parliament or Royal Charter, and paying a dividend on its ordinary stock or shares, or upon real or leasehold securities in England or Wales, but not elsewhere, such leasehold securities being held for a term whereof sixty years at least shall be unexpired at the time of such investment, or upon the security of a life interest in real or personal property together with a policy or policies of assurance on the life of the person for whose life such interest shall be holden: AND in lending money on any mortgage security the trustees may accept whatever title or evidence of title shall appear to them sufficient, and in particular may in the case of leasehold securities waive the production of the lessor's title, without being answerable for any loss arising thereby; and the trustees may at any time release any part of the property comprised in any mortgage security upon being satisfied that the remaining property comprised therein is a sufficient security for the money owing thereon. [And the trustees (*f*) may, if they shall think fit, lend money on any such security as aforesaid, in conjunction with money advanced by any other person or persons by way of contributory loan, and in such case the security may be taken in the joint names of the several contributories or any two or more of them, or in the joint names of any two or more persons to be nominated in that behalf by the several contributories, or such other arrangement may be made in relation thereto as the trustees may think fit].

Power to lend on contributory mortgages.

Power to invest in

8. IT shall be lawful for the trustees at any time during

(*e*) For other forms of the investment clause, see *suprà*, p. 230.

(*f*) This power of lending on contributory mortgages will be inserted or not, as in each case may be thought desirable.

PERSONALTY IN POSSESSION AND REVERSION.

Purchase of land.

the joint lives of the said A. B. and C. D., or the life of the survivor of them, upon their, his, or her request in writing, to convert into money all or any part of the trust funds for the time being subject to the trusts of these presents, and to invest the moneys arising thereby in the purchase of any messuages, lands, or hereditaments (*g*) situate in England or Wales, and being freehold or copyhold of inheritance, or leasehold for any term of years whereof sixty years at least shall be unexpired at the time of the purchase, with liberty upon any such purchase to accept such title or evidence of title as the trustees shall think fit, without being answerable for any loss arising thereby, AND the hereditaments so to be purchased as aforesaid shall be assured to the trustees, and shall be held by them UPON TRUST that they shall, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, sell the same and stand possessed of the moneys to arise from such sale after paying thereout the expenses attending such sale upon the trusts and with and subject to the powers and provisions (including the power of purchasing hereditaments) by and in these presents declared and contained concerning the trust funds, which or the proceeds whereof shall have been laid out in the purchase of the said hereditaments, or such of them as shall be then subsisting and capable of taking effect, AND shall in the meantime, and until the re-sale of the purchased hereditaments either permit the same to be occupied by the said A. B. and C. D. or the survivor of them, or with such consent or at such discretion as aforesaid let or demise the same or any part thereof either from year to year or for any term of years not exceeding twenty-one years, to take effect in possession at rack rent, and pay and apply the rents and profits thereof to the person or persons and in the manner to whom and

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(*g*) Sometimes it is desired to confine the power to the purchase of a dwelling-house. In such case, the words will be :—

"in the purchase of any messuage or dwelling-house with any land or ground adjoining thereto, or otherwise convenient to be held therewith, and so that the hereditaments to be purchased under this power shall be situate in England or Wales, and shall be freehold, &c."

PERSONALTY IN POSSESSION AND REVERSION.

in which the income of the trust funds laid out in the purchase thereof would for the time being have been payable or applicable if such purchase had not been made.

Appointment of new trustees.

9. The power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall, for the purposes of these presents, be vested in the said A. B. and C. D. during their joint lives, and in the survivor of them during his or her life.

Solicitor trustees' clause.

10. The said E. F., and any future trustee, &c. (*Solicitor trustee clause if necessary, suprà*, p. 232).

Settlement to be void if marriage does not take place within twelve months.

11. If the said intended marriage is not solemnized within twelve calendar months from the date hereof these presents shall be void, and the stocks, funds, shares, and securities comprised in the schedule hereto shall be retransferred to the said C. D.

In witness, &c.

The Schedule above referred to.

No. XII.

SETTLEMENT *of two* sums of money, Secured *by the* Covenants *of the* Husband's Father *and* Wife's Father *respectively, the* Husband's Life Interest *in both* Funds *to be determinable on* Alienation *or* Bankruptcy.

MONEY SECURED BY FATHER'S COVENANT.

Parties.

THIS INDENTURE, made the —— day of ——, Between H. B., of, &c. (*father of intended husband*), of the first part, A. B., of, &c., one of the sons of the said H. B. (*intended husband*), of the second part, M. D., of, &c. (*father of intended wife*), of the third part, C. D., spinster, one of the daughters of the said M. D. (*intended wife*), of the fourth part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the fifth part (*Recite agreement for marriage*): And whereas upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed: NOW THIS

Recital of intended settlement.

MONEY SECURED BY FATHER'S COVENANT.

INDENTURE, made in consideration of the said intended marriage, WITNESSETH AND DECLARES as follows :—

Witnessing part. Husband's father covenants to pay sum of money to trustees after marriage.

1. THE said H. B., hereby covenants with the said E. F., G. H., and I. K. (hereinafter called "the trustees") to pay to them within six calendar months after the solemnization of the said intended marriage, the sum of £3,000, with interest thereon after the rate of £4 per cent. per annum, computed from the day on which the marriage shall take place.

Wife's father covenants to pay sum of money to trustees on his death.

2. THE said M. D. hereby covenants with the trustees, that he the said M. D. will, during his life, or his heirs, executors, or administrators, will, within six calendar months after his death, pay to the trustees the sum of £3,000 sterling, with interest thereon after the rate aforesaid, in case the same shall not be paid in the lifetime of the said M. D., computed from the day of his death.

Trust to invest.

3. THE trustees shall, upon the receipt of the said sums of £3,000 and £3,000 respectively, with the consent of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees, invest the same in some or one of the modes of investment hereinafter authorized, and may with such consent or at such discretion as aforesaid, vary the said investments into or for others of the same or a like nature. The sum of £3,000 hereinbefore covenanted to be paid by the said H. B., and the investments for the time being representing the same, are hereinafter referred to as "the husband's trust funds," and the sum of £3,000 hereinbefore covenanted to be paid by the said M. D., and the investments for the time being representing the same, are hereinafter referred to as "the wife's trust funds."

Trusts of income of husband's trust funds. Proviso in case of alienation or bankruptcy.

4. THE trustees shall pay the income of the husband's trust funds to the said A. B. during his life, and after his decease to the said C. D. during her life: PROVIDED ALWAYS, that if the said A. B. shall assign or charge the said income, or any part thereof, or become bankrupt, or do or suffer any other act or thing whereby the said income, if payable to him absolutely, or any part thereof, would become vested in or payable to any other person, then and in such case the trust hereinbefore declared in favour of the said A. B. shall cease and determine, and the trustees shall thenceforth during the life of the said

MONEY SECURED BY FATHER'S COVENANT.

A. B. pay the said income to the said C. D. (if living) for her separate use, and so that she shall not have power to dispose thereof in the way of anticipation; but if the said C. D. shall not be living at the time of the cesser of the said trust in favour of the said A. B., or if she shall subsequently die in his lifetime, then from and after the cesser of the said trust, or from and after the death of the said C. D., which shall last happen, the trustees may, at their discretion (*a*), during the remainder of the life of the said A. B. apply the said income or any part thereof to or for the benefit of the said A. B. and his issue (if any) or any of them, in such manner as the trustees shall think fit, and shall pay or apply the surplus (if any) of the said income or the whole thereof, if none shall be applied in manner aforesaid, to the person or persons and in the manner to whom and in which the said income would be payable or applicable under these presents if the said A. B. were dead.

Trusts of income of wife's trust funds. Similar proviso on alienation or bankruptcy.

5. THE trustees shall pay the income of the wife's trust funds to the said C. D. during her life, for her separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation, and after her death shall pay the said income to the said A. B. if he shall survive her during his life: PROVIDED ALWAYS that if the said A. B. shall assign or charge the said income or any part thereof, or become bankrupt, or do or suffer any other act or thing whereby the said income, if payable to him absolutely, or any part thereof, would become vested in or payable to any other person, then and in such case the trust declared by this present article in favour of the said A. B. shall cease and determine: AND from and after the death of the said C. D., or the cesser of the last-mentioned trust, which shall last happen, and during the remainder of the life of the said A. B. the trustees may at their discretion apply the said income or any part thereof for the support or benefit of the said A. B. and his issue (if any) or any of them in such manner as the trustees shall think fit, and shall pay or apply the surplus (if any) of the said income or the whole thereof, if

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(*a*) As the intention of the parties is generally not to take away the income from the husband except so far as is necessary to prevent its passing into the hands of alienees or creditors, this object seems on the whole to be best attained by a discretionary power vested in the trustees during the rest of the husband's life as in the text.

MONEY SECURED BY FATHER'S COVENANT.

none shall be applied in manner aforesaid, to the person or persons and in the manner to whom and in which the said income would be payable or applicable under these presents if the said A. B. were dead.

Trusts for issue, and ultimate trust of husband's trust funds for appointees of husband's father, and in default of, appointees for husband.

6. AFTER the death of the survivor of the said A. B. and C. D. the trustees, &c. (*Trust for issue and Hotchpot clause, suprà*, p. 254): AND if there shall be no child of the said intended marriage who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the husband's trust funds, IN TRUST (*b*) for such person or persons and in such manner as the said H. B. shall by deed appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said A. B., absolutely: AND as to the wife's trust funds, IN TRUST for such person or persons, and in such manner as the said M. D. shall by deed appoint: AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said C. D., absolutely, if she shall survive her now intended coverture, but if she shall die during her now intended coverture, then [IN TRUST for such person or persons being a brother or sister, or brothers or sisters, or the issue of a brother or sister, or of brothers or sisters, of her the said C. D., as she the said C. D. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not

Corresponding ultimate trust, of wife's trust funds.

Observations as to the proper form of the ultimate trust, where money is settled by father of husband on wife.

(*b*) Where the money settled on the part of either party is found by his or her father, it is not quite clear what ought to be the form of the ultimate trust, in case of no issue of the marriage. The father may expect that the money should come back to him in that event, and that the ultimate trust should be framed accordingly. This seems right in theory, but it would often lead in practice to an inequality. Suppose, for instance, that the father dies shortly afterwards, and then the son or daughter (as the case may be), becomes a widower or widow, without issue of the marriage. It is probable that the father will by his will have given his residue among his other children, thinking the child in question to be already provided for by the settlement. If this is so, the child will be reduced to a life interest, and will be unable, in case of a second marriage, to make any settlement: whereas the other children will probably have an absolute interest in their shares. On the whole, it is recommended that, in the absence of special instructions, a power of appointment by deed be given to the father, and that, subject to such power, the ultimate trust be in the usual form, except that the testamentary power usually given to a wife when the money settled is her own, may be properly omitted, or a limited power of appointment may be given as above.

MONEY SECURED BY FATHER'S COVENANT.

extend] IN TRUST for, &c., (*next of kin under the Statute of Distribution,—remaining clauses as in last Precedent, suprà,* pp. 255 to 259).

IN WITNESS, &c.

No. XIII.

CONVEYANCE *of* FREEHOLDS, *in* CONTEMPLATION *of a* MARRIAGE, *to* TRUSTEES *on* TRUST *to* SELL, *and to hold the* PROCEEDS *on the* TRUSTS *of an* INDENTURE *of* SETTLEMENT *of even date* (*a*).

CONVEYANCE OF LAND ON TRUST FOR SALE IN CONTEMPLATION OF A MARRIAGE.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WITNESSETH, that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said A. B. as settlor (*b*) hereby conveys unto the said

Conveyance of heredita-

Reason for inserting in this deed an express trust of rents and profits for husband and wife successively until sale.

(*a*) The above Precedent is a settlement within the meaning of the Settled Land Act, 1882 (see sect. 63), and the tenant for life under it, *i.e.*, the husband during his life, and then the wife, if she survives, during her life, will have all the powers of selling, exchanging, leasing, &c., given by the Act, so that a sale may be made either by the tenant for life, or by the trustees under the express trust, as may be thought more convenient. It will be noticed that, after the trust for sale, there is an express trust as to the rents and profits until sale, for the husband and wife successively, instead of leaving these trusts to be declared, as has been heretofore customary, by the deed of settlement of even date. The reason for this is that, under the above-mentioned Act, a purchaser is concerned to see who is the person entitled to the rents and profits of the land at the time of the sale, it being provided that no sale shall be made without his consent (sect. 56). Consequently, if the trust of the rents and profits until sale is declared by the other deed, a purchaser will be bound to inspect that deed in order to ascertain that the sale is made with the proper consent, and will for the same reason require an acknowledgment of the right to its production.

In a conveyance before marriage settlor should convey as settlor, not as beneficial owner.

(*b*) Although it was formerly usual to insert in a conveyance, made in contemplation of marriage, to trustees for sale, covenants for title by the person conveying, as upon a sale by him, it is apprehended that, since the Conveyancing, Act, 1881, it is proper to make him convey not as beneficial owner, but as settlor, under which form a covenant for further assurance only will be implied. A person making a settlement may fairly object to make himself liable for the acts of his ancestors, as he would under a vendor's covenants for title.

CONVEYANCE OF LAND ON TRUST FOR SALE IN CONTEMPLATION OF A MARRIAGE.

E. F., G. H., and I. K. (hereinafter called "the trustees"), ALL, &c. (*Parcels*), TO HOLD the same unto and to the use of the trustees in fee simple, IN TRUST for the said A. B. in fee simple until the said intended marriage, and after the said marriage, UPON TRUST that the trustees shall, upon the request of the said A. B. during his life, and after his decease upon the request in writing of the said C. D. during her life, and after the decease of the survivor of them the said A. B. and C. D., at the discretion of the trustees, sell the said hereditaments and premises, and shall receive the moneys which shall arise from any such sale as aforesaid, and after paying and retaining thereout the costs and expenses attending such sale, shall stand possessed of the residue of the said moneys, upon such trusts and with and subject to such powers and provisions as are or shall be expressed and declared concerning the same by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between, &c. (*parties*): AND UPON FURTHER TRUST that in the meantime and until such sale as aforesaid the trustees shall permit the rents and profits of the said hereditaments to be received by the said A. B. during his life, and after his decease by the said C. D., during her life, and so that each of them the said A. B. and C. D. while entitled to receive the rents and profits as aforesaid, shall have all the rights and privileges of a tenant for life without impeachment of waste, AND after the decease of the survivor of the said A. B. and C. D. shall stand possessed of the said rents and profits upon the trusts declared concerning the same by the indenture above referred to. [AND IT IS HEREBY DECLARED that it shall not be necessary for the said A. B. or C. D., when intending to make a lease of the said hereditaments, or any part thereof, under the power in that behalf conferred by the Settled Land Act, 1882, to give to the trustees of these presents, or their solicitor, any notice of his or her intention in that behalf pursuant to section 45 of that Act (*a*)]: AND IT IS HEREBY ALSO DECLARED, that (*Provision as to appointment of new trustees, suprà*, p. 232).

ments to trustees for sale;

and to hold proceeds of sale on trusts of indenture of even date;

and in the meantime to allow husband and wife successively to receive the rents and profits.

No notice of intended lease need be given to trustees.

IN WITNESS, &c.

(*a*) See p. 212, *infra.*

No. XIV.

SETTLEMENT *on the part of the intended* HUSBAND *of the* PROCEEDS *of the sale of* LAND *conveyed upon* TRUST *for* SALE *by an Indenture of even date, and* SETTLEMENT *on the part of the intended* WIFE *who is an* INFANT *with the* SANCTION *of the* COURT *under the* INFANT SETTLEMENT ACT (*a*), *of* PERSONAL *estate in* POSSESSION *and* REVERSION, *including a share in the* PROCEEDS *of* LAND *directed to be sold;* POWER *to* WIFE *to settle part of* TRUST FUNDS *on a* FUTURE MARRIAGE; PROVISION *for settling* OTHER PROPERTY *if any of* WIFE; POWER *to invest in* PURCHASE *of* LAND *and to* ELECT *to take* SHARE *of land in* LIEU *of the* SETTLED SHARE *of the* PROCEEDS *of such land.* POWER *to* LEND *part of the trust money to the* HUSBAND *on his* BOND, *and on* POLICY *of* ASSURANCE *on his life.*

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., spinster, the eldest daughter of M. D., of, &c., and N., his wife, and an infant of the age of eighteen years or thereabouts (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS by an indenture bearing even date with these presents and made between the same parties, the said A. B. has conveyed a messuage, farm, lands and hereditaments, known as the —— Farm, situate at, &c., unto and to the use of the said E. F., G. H., I. K., in fee simple, upon trust, upon such request, or at such discretion as therein mentioned, to sell the same and to receive the moneys to arise from such sale, and after paying and retaining thereout the costs and expenses attending the sale, to stand possessed of the residue of the said moneys, upon the trusts and with and subject to the powers and provisions declared by an indenture therein referred

Recital of intended marriage.

Conveyance by husband of freeholds to trustees in trust to sell.

(*a*) See p. 215, *supra*.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

to (meaning these presents), and upon further trust in the meantime, and until a sale, to permit the rents and profits of the said hereditaments to be received by the said A. B. and C. D. successively during their lives, and after the decease of the survivor of them, to stand possessed of the said rents and profits upon the trusts declared concerning the same by the said indenture therein referred to (meaning these presents): AND WHEREAS the said C. D. will, upon her marriage, become entitled to a sum of £—— Consolidated £3 per Cent. Annuities, standing in the name of X. Y., the surviving executor of the will of P. Q., late of, &c., deceased, in the books of the Governor and Company of the Bank of England, and representing a legacy of £—— sterling thereby bequeathed to the said C. D.: AND WHEREAS under or by virtue of an indenture, dated, &c., and made, &c., (being the settlement made in contemplation of the marriage then intended, and shortly afterwards solemnized, between the said M. D. and N., his wife), and a deed poll of appointment under the hands and seals of the said M. D. and N., his wife, bearing even date with these presents, the said C. D. will upon the solemnization of the said intended marriage, in case the same shall be solemnized before the expiration of twelve calendar months from the date of the said deed poll, become entitled in reversion expectant on the decease of the survivor of the said M. D. and N. his wife, to one moiety of the moneys, stocks, funds, and securities subject to the trusts of the said indenture of settlement, and which moneys, stocks, funds, and securities now consist of the following particulars (that is to say), the sum of £—— Reduced £3 per Cent. Annuities, and the sum of £—— New £3 per Cent. Annuities, standing in the names of W. X. and Y. Z., the present trustees of the said indenture, in the books of the Governor and Company of the Bank of England, and the moneys to arise from the sale of certain freehold lands and hereditaments situate at, &c., and which freehold hereditaments have been purchased with part of the moneys settled by the said indenture of settlement under a power in that behalf contained in the same indenture: AND WHEREAS by an order of the Chancery Division of the High Court of Justice made on the —— day of ——, 18—, in the matter of the Act passed in the 18th and 19th years of the reign of Her Majesty, chapter 43, the Court being of opinion that the settlement proposed to be effected by the

That wife will upon marriage be entitled to stock.

That wife will upon marriage become also entitled to reversionary share in sum of stock, and also in money to arise from sale of land.

Order of Court under Infant Settlement Act.

indenture therein referred to, meaning these presents, is a proper settlement to be made in contemplation of the said marriage, has, pursuant to the said Act, sanctioned and approved of such settlement, and has ordered that the said C. D. be at liberty in contemplation of her said marriage to execute the same.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH, as follows :—

Witnessing part.

1. The said C. D. hereby assigns unto the said E. F., G. H., and I. K., hereinafter called the trustees, the said sum of £—— Consolidated £3 per Cent. Annuities, and also the said moiety to which the said C. D. will upon her said marriage become entitled of and in the trust funds and property subject to the trusts of the said indenture of settlement of the —— day of ——, To hold the same unto the trustees, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Agreement by all parties. That trust funds of the intended wife shall be vested in trustees.

2. The trustees shall, upon the receipt of the several trust funds assigned by Article 1, either retain the same respectively in their respective actual state of investment (if any), or with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, sell and convert into money the same, and shall, with such consent, or at such discretion as aforesaid, invest the moneys produced by such sale and conversion, and also such part (if any) of the said trust funds as shall consist of money, and also the moneys to arise from the sale of the hereditaments comprised in the said indenture bearing even date herewith, in some or one of the modes of investment hereinafter authorized, with liberty from time to time, with the like consent or at the like discretion to vary the said investments into or for others of the same or a like nature : The moneys to arise from the sale of the said hereditaments, and the investments for the time being representing the same are hereinafter called "the husband's trust funds :" And the trust funds assigned by Article 1, and the investments for the time being representing the same are hereinafter called "the wife's trust funds."

Trustees upon receipt thereof to retain or convert same into money and to invest proceeds and also proceeds of sale of hereditaments comprised in deed of even date, with power to vary investments.

3, 4, 5. (*Same as in Articles* 3, 4, *and* 5 *of Precedent No. XI. suprà*, pp. 254, 255).

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

Rents of hereditaments until sold to go as income of husband's trust funds.

6. If the hereditaments comprised in the said indenture of even date herewith shall remain unsold at the decease of the survivor of the said A. B. and C. D., the net rents and profits of the same hereditaments or such part thereof as shall for the time being remain unsold, shall thenceforth be paid and applied to the person or persons and in the manner to whom and in which the income of the moneys to arise from the sale thereof, and the investments representing the same, would for the time being be payable or applicable under these presents if such sale had been made.

Power to wife, to appoint income of part of the trust funds to a future husband,

and also the principal of a portion of the trust funds to the issue of a future marriage.

7. Notwithstanding the foregoing trusts, it shall be lawful for the said C. D. if she shall marry again (*c*) at any time or times, either before or after any such subsequent marriage, by any deed or deeds, or by her will to appoint that the income of any part or parts not exceeding the proportion hereinafter mentioned of the wife's trust funds, shall be paid to any husband of her the said C. D. who may survive her, for his life or any less period: And also to appoint that any part or parts not exceeding the proportion hereinafter mentioned of the wife's trust funds, shall from and after the decease of the said C. D. (and subject to any life or other interest appointed to a husband under the power last hereinbefore contained, in exoneration of the residue of the wife's trust funds), go and be held, In trust for such child, children, or remoter issue of any such subsequent marriage, at such age or time, ages or times, not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage, in such shares, if more than one, upon such conditions and in such manner as the said C. D. shall by such appointment direct, with liberty for her in and by such appointment to confer on her husband jointly with herself and on the survivor of them any power or powers of appointment to or among their issue, or any of them, and also to confer on the trustees a power of

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(*c*) Whenever the property of the wife is of considerable amount and her age is such as to make it not improbable that if she survives her husband she may marry again and have issue by her second husband, a power to make a settlement on such second marriage should be given her. Three alternative forms of such a power are given above, one of which may be readily adapted to meet any variation which the circumstances of the case may require.

Sometimes a similar power is reserved to the husband. In such case either of the above forms may be used, changing "husband" into "wife," and making a corresponding change in the gender throughout.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

Portion to be appointed under aforesaid powers not to exceed a certain proportion of the trust funds according to the number of children of now intended marriage.

advancement to the extent of one moiety of the vested or presumptive share of any child or remoter issue: Provided always, that the part or parts of the wife's trust funds, the income whereof may be appointed to any after-taken husband, and the principal whereof may be appointed to the issue of any subsequent marriage or marriages of the said C. D., under the foregoing powers in that behalf, shall not exceed the proportion of the wife's trust funds which is next hereinafter mentioned (that is to say), If there shall be only one child of the now intended marriage, who, being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, the same shall not exceed two third parts of the wife's trust funds: If there shall be two or three children, and no more, of the now intended marriage, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the same shall not exceed one moiety of the wife's trust funds; And if there shall be four or more children of the now intended marriage, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the same shall not exceed one third part of the wife's trust funds: [Provided also (*d*), that the part or parts of the wife's trust funds to which the issue of any subsequent marriage or marriages of the said C. D. shall become entitled between them under any such appointment or appointments as aforesaid, shall not bear a greater proportion to the residue of the wife's trust funds than the number of children of any such subsequent marriage or marriages, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry: But in ascertaining such proportion as last aforesaid, any sum of money which may be advanced for the benefit of an infant child under the power in that behalf contained in these presents or in any such appointment as aforesaid, shall not be reckoned or taken into account unless such child, being a son shall attain the age of twenty-one years, or

Issue of a future marriage shall not take a greater proportion between them than issue of now intended marriage.

(*d*) This proviso will be omitted, when not thought necessary.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

Powers in favour of future husband and issue of future marriage may be exercised before event is ascertained.

being a daughter shall attain that age or marry under that age.] Provided also, that the said C. D. may exercise the foregoing powers in favour of an after-taken husband and the issue of a subsequent marriage respectively, while it shall be uncertain what part of the wife's trust funds shall or may eventually fall within the scope thereof, and the same shall take effect according to the event: And if at the decease of the said C. D. any son or unmarried daughter of the now intended marriage shall be under the age of twenty-one years, the income payable to an after-taken husband under any such appointment as aforesaid shall, during such minority, be the same as would for the time being be payable to him if every such minor had attained the age of twenty-one years.

(*Or the following form.*)

Power to wife to appoint income of a moiety of the wife's trust funds to a future husband for life

and a certain proportion corresponding with the number of children of each marriage to the issue of a future marriage.

7a. Notwithstanding the foregoing trusts it shall be lawful for the said C. D., if she shall marry again at any time or times, either before or after any such subsequent marriage, by any deed or deeds, or by her will, to appoint that the income of any part not exceeding one moiety of the wife's trust funds shall after her decease be paid to any husband of her who may survive her during his life or for any less period: And also to appoint that any part of the wife's trust funds not bearing a greater proportion to the residue of the wife's trust funds than the number of children of any subsequent marriage or marriages of the said C. D., who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall from and after the decease of the said C. D. (and subject to any life or other interest appointed to a husband as aforesaid in exoneration so far as the same will extend of the residue of the wife's trust funds), go and be held, In Trust for such child, children, or remoter issue of the said C. D. by any such subsequent marriage at such age or time, ages or times (not being earlier as to any object of this power than his or her age of twenty-one years, or day of marriage), in such shares if more than one, and in such manner as she the said C. D. shall by such appointment direct, with liberty for her in and by such appointment to confer on her husband jointly with herself, and on the survivor of them, any power or powers of appointment to be subsequently exercised to or among their issue or any of them, and also to confer on the trustees a power of advancement to the extent of one moiety of the vested or presumptive share of any child or remoter issue.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

(*Another form.*)

7B. If the said C. D. shall survive her now intended coverture and marry again [and there shall be not more than four children of the now intended marriage, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry] (*e*) then and in such case, and notwithstanding the foregoing trusts, it shall be lawful for the said C. D. either before or after any such subsequent marriage by any deed or deeds or by her will to appoint that the income of any part not exceeding one moiety of the wife's trust funds shall after her decease be paid to any husband of her who may survive her, during his life or for any less period, And also to appoint that any part not exceeding one moiety of the wife's trust funds shall, after the decease of the said A. B. and subject to any life or other interest appointed to a husband under the power last hereinbefore contained, in exoneration of the residue of the said trust funds, go and be held, In trust for, &c. (*Issue of a future marriage as in Article* 7A).

Power to wife to appoint income of a moiety to future husband for life and corpus of a moiety to issue of a future marriage.

8, 9, 10. (*Agreement to settle other property of wife,—Investment clause, and Power to invest in purchase of land, as in Precedent No. XI., suprà*, pp. 255 to 258).

11. If at the decease of the survivor of the said M. D. and N., his wife, the said freehold hereditaments at ——, or any part thereof, or any other hereditaments purchased with or out of the trust funds subject to the trusts of the said indenture of settlement of the —— day of ——, shall remain unsold, the

Power to trustees to elect to take moiety in land in lieu of moiety settled by

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(*e*) The words in brackets can be omitted if desired.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

wife of proceeds of sale.

trustees of these presents may, with such consent or at such discretion as aforesaid, take from the trustees for the time being of the said indenture of settlement a conveyance or other assurance of an undivided moiety of the same hereditaments, in lieu of and in satisfaction for the moiety of the said C. D. of and in the moneys to arise from the sale of the same hereditaments; and in that case the trustees of these presents shall stand seised and possessed of the undivided moiety so to be assured to them as aforesaid of and in the said hereditaments, upon the same trusts and with and subject to the same powers and provisions, as the same moiety would have been subject to by virtue of these presents if the same had been purchased with the proceeds of any part of the wife's trust funds under Article 10.

Power to lend part of trust funds to husband on the security of his bond or covenant and a policy of assurance on his life.

Power to trustees to apply income of trust funds in keeping up policy.

Proviso for indemnity of trustees in relation to the exercise of this power.

12. It shall be lawful for the trustees at their discretion, at any time or times during the life of the said A. B., upon his request in writing, and with the consent in writing of the said C. D., if she shall be then living, to raise out of the trust funds, and to lend to the said A. B. any sum or sums of money not exceeding together the sum of £——, upon his securing the repayment thereof with interest by his bond or covenant, and by a policy of assurance on his life in a sum of money equal to the amount so lent, which policy shall be either effected in the names of the trustees, or assigned to them by way of mortgage, with such proper and usual covenants on the part of the said A. B. for keeping on foot the said policy, and otherwise in relation thereto as the trustees shall require: And if the said A. B. shall neglect or fail to keep on foot the said policy, it shall be lawful for the trustees to apply a competent part of the income of the trust funds in or towards the payment of any sums which may be required for keeping on foot the said policy, or (in case the same shall become void) for effecting or keeping on foot any new policy in lieu thereof: Provided nevertheless, that it shall not be obligatory on the trustees to enforce the performance of any bond or covenant to be entered into by the said A. B. for the repayment of the money to be lent to him as aforesaid, or for keeping on foot any policy or otherwise in relation thereto, nor to apply any part of the income of the trust funds in or towards keeping on foot or effecting any such policy as aforesaid, unless the trustees shall think fit so to do, and

the trustees shall not be liable for any loss which may arise by reason of the non-performance by the said A. B. of any such bond or covenant as aforesaid, or by reason of any such policy becoming void through any means whatsoever: PROVIDED ALSO, that the trustees shall not require the said A. B. to re-pay any money lent to him under the power conferred by this article so long as he shall duly keep on foot the policy of assurance on which the same shall for the time being be secured: BUT the said A. B. shall be at liberty to pay the same or any part thereof not being less than £—— at one payment whenever he thinks fit so to do.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

Proviso that money lent to husband shall not be called in so long as he keeps up policy.

13. THE power of appointing new trustees, &c. (*Clause as to appointment of new trustees, suprà*, p. 232).

Power to appoint new trustees.

14. THESE PRESENTS shall be void if the said intended marriage shall not be solemnized within twelve calendar months from the date hereof.

Settlement to be void if marriage is not within twelve months.

IN WITNESS, &c.

No. XV.

SETTLEMENT *upon the* SECOND MARRIAGE *of a* LADY, *in Exercise of* POWER *in a* FORMER SETTLEMENT; AGREEMENT *to settle* OTHER PROPERTY *of* WIFE *in favour of* ISSUE *of* BOTH MARRIAGES.

UPON SECOND MARRIAGE OF A LADY.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN C. B., of, &c., widow (*intended wife*), of the first part, X. Y., of, &c. (*intended husband*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c., of the third part: WHEREAS by an indenture dated, &c., and made, &c. (being the settlement made in consideration of the marriage of the said C. B., then C. D., with her deceased husband A. B.), it was agreed and declared (among other things), that the trustees for the time being of the said indenture should after the

Parties.

Recital of settlement on first marriage.

UPON SECOND MARRIAGE OF A LADY.

decease of such one of them the said A. B. and C. B. as should first die, pay the income of the trust funds thereby settled, and which are therein called "the husband's trust funds" and "the wife's trust funds" respectively, to the survivor of them during his or her life, and should after the decease of such survivor hold the said trust funds IN TRUST for all or such one or more of the children and remoter issue of the said then intended marriage as the said A. B. and C. B. or the survivor of them should in manner therein mentioned appoint, and in default of such appointment, IN TRUST for all the children of the said then intended marriage, who, being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, in equal shares, with an ultimate trust in default of issue of the said then intended marriage as regards the wife's trust funds for the said C. B. absolutely: AND it was also declared that, &c. (*set out fully power to appoint to future husband and to issue of future marriage, being Article 7 of Precedent No. XIV.*): AND WHEREAS the said A. B. died on the —— day of ——, 18—, leaving the said C. B. his widow and four children by her —— (*state names of children*), all of whom are infants and unmarried: AND WHEREAS the trust funds in the said indenture of settlement called "the husband's trust funds," now consist of or are represented by the following particulars, namely (*state particulars*), and the trust funds in the said indenture of settlement called "the wife's trust funds," now consist of or are represented by the following particulars, namely (*state particulars*): AND WHEREAS a marriage is intended shortly to be solemnized between the said C. B. and the said X. Y.: AND upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed:

Death of first husband leaving children.

Present state of trust funds.

Agreement for intended marriage and for settlement.

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED, between and by the parties hereto, and the said C. B., in exercise of all powers for this purpose vested in her by the said indenture of settlement or otherwise, doth hereby direct and appoint as follows:—

Agreement and appointment.

Income of trust funds shall be paid to wife for her separate use without

1. THE trustees for the time being of the hereinbefore recited indenture (hereinafter called "the trustees"), shall pay the income of all the trust funds settled by the said indenture to the said C. B. during her life, pursuant to the trust in

UPON SECOND MARRIAGE OF A LADY.

power of anticipation.

that behalf declared by the said indenture for her separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation.

One-third of trust funds after decease of wife to go to intended husband's life and after his decease to issue of intended marriage.

2. From and after the decease of the said C. B. the trustees shall stand possessed of one equal third part of the trust funds in the said indenture and hereinafter called "the wife's trust funds," In trust to pay the income thereof to the said X. Y. during his life, and after his decease, In trust for, &c. (*Trusts for issue as husband and wife or survivor shall appoint, and in default of appointment for children equally—sons at twenty-one, and daughters at twenty-one or marriage,—Hotchpot clause, suprà*, p. 254).

If one of four children of former marriage shall die under twenty-one, &c., a further one-sixth to go upon similar trusts.

3. If one of the said four children of the said C. B., by her late husband A. B., shall die, being a son under the age of twenty-one years, or being a daughter under that age and without having been married, then and in such case and from and after the death of the said C. B. or the death of such child (which event shall last happen), the trustees shall stand possessed of one-sixth part of the wife's trust funds, in addition to the one-third part mentioned in Article 2, and making therewith one moiety of the wife's trust funds, Upon the trusts and with and subject to the powers and provisions declared by Article 2 concerning one-third part of the wife's trust funds, or such of them as shall be then subsisting and capable of taking effect.

If three of said four children shall die under twenty-one, &c., a further one-sixth to go upon similar trusts.

4. If three of the said four children of the said C. B. by the said A. B. deceased shall die, being a son or sons under the age of twenty-one years, or being a daughter or daughters under that age and without having been married, then and in such case, and from and after the death of the said C. B., or the death of such one of them the said three children so dying as aforesaid as shall last die (which of the said events shall last happen), the trustees shall stand possessed of one other sixth part of the wife's trust funds, in addition to the one-third part and one-sixth part mentioned in Articles 2 and 3 respectively, and making therewith two full third parts of the wife's trust funds, Upon the trusts and with and subject to the powers and provisions declared by Article 2 concerning one-third part of the wife's trust funds, or such of them as shall be then subsisting and capable of taking effect.

Proviso that issue of now intended marriage shall not take a greater proportion than issue of former marriage.

[5. PROVIDED ALWAYS (*a*), that the portion of the wife's trust funds to which the issue of the now intended marriage shall become entitled between them under the trusts and provisions of these presents, shall not bear a greater proportion to the residue of the wife's trust funds than is limited and provided in that behalf by the hereinbefore recited indenture and if the portion hereinbefore expressed to be appointed in favour of the issue of the now intended marriage shall exceed the aforesaid proportion, then and in such case the trusts hereby declared in favour of such issue shall be void so far as regards the excess, but subject and without prejudice to the life interest of the said X. Y, therein.]

Declaration of trust of entire trust funds, in case no issue of former marriage shall attain a vested interest.

6. IF neither of the said four children of the said C. B. by the said A. B. deceased, and no issue of any such child shall become absolutely entitled to the residue not hereinbefore appointed of the wife's trust funds under the trusts and powers of the hereinbefore recited indenture, then and in such case and subject to the same trusts and powers and from and after the death of the said C. B. or such failure of issue as aforesaid (which shall last happen), the trustees shall stand possessed of the entirety of the wife's trust funds, UPON the trusts and with and subject to the powers and provisions declared by Article 2, concerning one-third part of the wife's trust funds or such of them as shall then be subsisting and capable of taking effect.

Upon same trusts as before declared concerning appointed one-third.

7, 8. (*Direction as to shares of infant married daughters and Advancement clause, suprà*, p. 255).

If no issue of either marriage ultimate trust for wife or her appointees by will or next of kin.

9. IF no child of the said C. B. by the said A. B. deceased, or by the said X. Y. shall become absolutely entitled to the wife's trust funds under the trusts and powers of the hereinbefore recited indenture and of these presents respectively, then and in such case and subject to the same trusts and powers, the trustees shall stand possessed of the wife's trust funds, IN TRUST for, &c. (*Ultimate trust for the wife or her appointees by will or next of kin, suprà*, p. 255).

Power of appointment among issue of former marriage to remain in force.

10. THE power of appointment among the children and remoter issue of the said C. B. by the said A. B. deceased now vested in the said C. B. as having survived the said A. B. under the here-

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(*a*) If the proviso at the end of paragraph 7 in the last Precedent is omitted, the above proviso will be omitted also.

UPON SECOND MARRIAGE OF A LADY.

inbefore recited indenture, shall remain in full force and be exerciseable by her notwithstanding her now intended coverture so far as regards the residue not subject to these presents of the wife's trust funds.

IN WITNESS, &c.

No. XVI.

SETTLEMENT *upon the* SECOND MARRIAGE *of a* LADY, *in exercise of* POWERS *in* FORMER SETTLEMENT (*Another form*).

UPON SECOND MARRIAGE OF A LADY.

THIS INDENTURE (*the same as last Precedent down to the beginning of the first paragraph, except that Article* 7A *instead of Article* 7 *of Precedent No. XIV. is recited*).

Wife to receive income of all the settled trust funds for her separate use without power to anticipate.

1. AFTER the said marriage the said E. F., G. H., and I. K., (hereinafter called "the trustees") shall pay the income of all the trust funds settled by the said indenture to the said C. B., so that during her now intended coverture the same shall be for her sole and separate use, and she shall not have power to dispose thereof in the way of anticipation.

Income of a moiety of wife's trust funds to be paid to her husband [or until second marriage, bankruptcy, &c.]

2. IF the said X. Y. shall survive the said C. B., the income of one moiety of the trust funds in the said indenture of settlement and hereinafter called the wife's trust funds, shall after the decease of the said C. B. be paid to the said X. Y. during his life [or until he shall marry again or shall assign or charge the said income, or any part thereof, or become bankrupt, or do or suffer any other thing whereby the said income, or any part thereof, if belonging absolutely to him, would become vested in any other person or persons, in either of which events the interest of the said X. Y. shall cease as if he were dead].

Certain proportion of wife's trust funds to form "future children's trust fund."

3. FOR the purposes of these presents the wife's trust funds shall be considered as divided into so many equal parts as there shall be children of the said C. B., as well by the said A. B. deceased as by the said X. Y., who, being a son or sons, attain the age of twenty-one years, or being a daughter or daughters,

attain that age or marry: AND so many of the said equal parts as there shall be children of the said C. B. by the said X. Y., who, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, shall form together the fund which is hereinafter referred to as "the future children's trust fund."

Trusts of future children's trust funds.

4. THE future children's trust fund shall, after the decease of the said C. B., and subject to the interest of the said X. Y., under Article 2, in exoneration so far as the same will extend of the residue of the wife's trust funds go and be held IN TRUST for, &c. (*Trust for issue of now intended marriage as husband and wife or survivor shall appoint, and in default of appointment, for children equally, and Hotchpot clause, mutatis mutandis, suprà*, p. 254).

5, 6. (*Direction as to shares of infant married daughters and Advancement clause, suprà*, p. 255, *substituting* X. Y. *and* C. B. *for* A. B. *and* C. D.)

Power of appointment in settlement in favour of issue of former marriage to remain in force.

7. THE power of appointment given to the said C. B. by the said indenture of settlement in favour of all or any of her issue by the said A. B. deceased, shall remain in full force so far as regards that part of the wife's trust funds which is not hereby appointed in favour of the issue of the now intended marriage.

Ultimate trusts in case of no issue of either marriage.

8. IF there shall be no issue of the said C. B., either by the said A. B. deceased, or by the said X. Y., in whom the wife's trust funds shall become absolutely vested under the trusts and powers of the said indenture of settlement, or of these presents, then and in such case, and subject to the interest of the said X. Y., under Article 2, the trustees shall stand possessed of the wife's trust funds, IN TRUST for, &c. (*Ultimate trust for wife or her appointees by will or next of kin, suprà*, p. 255).

Agreement to settle other property of wife.

9. ALL, &c. (*Agreement to vest in trustees other property of wife, suprà*, p. 255, *but with the following variation in the trusts*): UPON TRUST that the trustees shall, at such time or times as they shall think fit, but as to reversionary property not until it shall fall into possession, sell, call in, and convert into money all such part of the said property as shall not consist of money or of investments of the nature authorised by the said indenture of settlement, and shall stand possessed of such part of the said property as shall consist of

authorised investments, or of money uninvested, and also of the moneys to arise from such sale, calling in, and conversion as aforesaid: UPON the trusts, and with and subject to the powers and provisions in and by the said indenture of settlement and these presents declared and contained of and concerning the wife's trust funds, or the moneys to arise from the sale and conversion thereof, or such of them as shall be then subsisting and capable of taking effect, and shall, in the meantime, and so long as any property hereinbefore directed to be sold and converted shall remain unsold and unconverted, pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the wife's trust funds shall, for the time being, be payable or applicable under the said indenture of settlement and these presents: PROVIDED ALWAYS, &c. (*Proviso as to any part of property consisting of annuity or income, suprà,* p. 256, *substituting at the end the words* "under the said indenture of settlement or these presents" *for the words* "under the foregoing trusts.")

UPON SECOND MARRIAGE OF A LADY.

10. THESE presents shall be void if the said intended marriage is not solemnized within twelve calendar months from the date hereof.

Settlement to be void if marriage is not within twelve months.

IN WITNESS, &c.

No. XVII.

SETTLEMENT *of a sum of* STOCK *in the usual form,* EXCEPT *that the* ELDEST SON *entitled as* TENANT IN TAIL *to* REAL ESTATE *under a* SETTLEMENT *of even date is to be* EXCLUDED.

ON CHILDREN (EXCLUDING ELDEST SON).

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., I. K., of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS

Parties.

Recitals.

Agreement for marriage.

ON CHILDREN (EXCLUDING ELDEST SON).

Settlement of real estate by deed of even date.

by an indenture bearing even date with these presents, and made between (*parties*) in consideration of the said intended marriage, divers messuages, lands and hereditaments, in the county of ——, therein particularly described, have been settled to the use of the said A. B. for his life with remainder (subject to a jointure rent-charge payable to the said C. D.) to the use of the first and other sons of the said intended marriage successively in tail male, with divers remainders over:

Agreement for settlement of stock.

AND WHEREAS upon the treaty for the said intended marriage it was agreed that the sum of £10,000 Consolidated £3 per Cent. Annuities belonging to the said C. D. should be settled upon the trusts and in the manner hereinafter expressed, and the same has accordingly been transferred into the names of the said E. F., G. H., and I. K., in the books of the Governor and Company of the Bank of England:

Witnessing part.

NOW THIS INDENTURE WITNESSETH that in consideration of the said intended marriage it is hereby agreed and declared as follows:—

1. (*Declaration of trust of stock for wife until marriage, and afterwards to retain or vary investments.*)

Trusts for wife and husband and issue.

2. THE trustees shall, &c. (*trust to pay income to wife for life for her separate use, without power of anticipation, and then to husband for life, suprà*, p. 234): AND from and after the decease of the survivor of the said A. B. and C. D. shall stand possessed of the trust funds hereby settled, IN TRUST for the child, or all or any of the children of the said intended marriage (except a son or sons excluded by Article 3, in the event therein mentioned), or any issue of such child or children, at such ages or times, or age or time (not earlier as to any object of this power than his or her age of twenty-one years or day of marriage, in such shares if more than one, upon such conditions, and in such manner as the said (*husband and wife, or survivor, shall appoint, suprà*, p. 228): AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said intended marriage (except a son or sons excluded by Article 3, in the event therein mentioned), who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for such one child (*Hotchpot clause, suprà*, p. 228): AND if there

shall be no child of the said intended marriage who shall attain a vested interest in the said trust funds under the foregoing trusts, then IN TRUST, &c. (*ultimate trust for wife or her appointees by will, or next of kin, suprà*, p. 235).

ON CHILDREN (EXCLUDING ELDEST SON).

3. THE first born or only son of the said intended marriage, and also every other son (if any), who at the time when he attains the age of twenty-one years shall be entitled under the said indenture bearing even date with these presents to the hereditaments thereby settled for an estate in tail male in possession or in remainder immediately expectant on the decease of the said A. B., shall be excluded from all share in the trust funds hereby settled, if there shall be any other child or children of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age, or marry, but not otherwise.

Eldest son to be excluded, if any other child who attains vested interest.

(*Remaining clauses as in former Precedents.*)

IN WITNESS, &c.

No. XVIII.

SETTLEMENT *by intended* HUSBAND *and* WIFE *for the benefit of their respective* ISSUE *as well by the* INTENDED MARRIAGE *as by any* FUTURE MARRIAGE, *with appropriate Clauses* (*a*).

FOR ISSUE OF HUSBAND AND WIFE RESPECTIVELY BY ANY MARRIAGE.

THIS INDENTURE, &c. (*Parties. Recitals of agreement for intended marriage, and for settlement and transfer of trust funds by husband and wife respectively to the trustees*) : NOW THIS INDENTURE WITNESSETH, that in consideration

Parties and recitals.

Witnessing part.

(*a*) Where it is intended that only a limited portion of the settled property shall be disposable in favour of the issue of a future marriage, as is generally the case, the proper form is to make the settlement in the first instance in favour only of the issue of the intended marriage, with powers to the husband and wife respectively to make a settlement to the agreed amount in case of a future marriage. See Precedent No. XIV., *suprà*. The powers thereby given to the wife can be easily adapted so as to be made applicable to a husband.

FOR ISSUE OF HUSBAND AND WIFE RESPECTIVELY BY ANY MARRIAGE.

of the said intended marriage, IT IS HEREBY AGREED AND DECLARED between and by the parties hereto as follows:—

1, 2. (*Trusts for husband and wife respectively until marriage, and for investment and varying investments.*)

Trusts until marriage and for investment, &c.

Income of husband's trust funds to go to husband and wife successively for life and after death of survivor same funds to go to issue of husband by any marriage as he shall by deed or will appoint,

and in default of such appointment then for issue of intended marriage as wife surviving shall by deed or will appoint;

and in default of such appointment for children of husband by any marriage equally to vest at usual periods.

3. THE trustees shall pay the income of the husbands' trust funds to the said A. B. during his life, and after his decease to the said C. D., if she shall survive him, during her life, and after the decease of the survivor of the said A. B. and C. D., shall stand possessed of the husband's trust funds, IN TRUST for such child, children, or remoter issue of the said A. B., whether by his now intended marriage or by any future marriage, at such ages or times or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said A. B. shall by any deed or deeds, or by his will appoint: [AND in default of such appointment, and so far as any such appointment shall not extend, then IN TRUST for such child, children, or remoter issue of the now intended marriage at such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said C. D., if she shall survive the said A. B., shall, by any deed or deeds, or by her will appoint:] (*b*) AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said A. B., as well by his now intended marriage as by any future marriage or marriages, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: AND if, &c. (*Ultimate trust for husband absolutely, suprà*, p. 229).

Power to husband to appoint life interest in moiety of husband's trust funds to a future wife.

4. NOTWITHSTANDING the trusts declared by the last preceding article, it shall be lawful for the said A. B., if he shall marry again, and before or after any such future marriage, by any deed or deeds, or by his will, to appoint that the income of any part not exceeding one moiety of the husband's trust funds shall be

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(*b*) The words in brackets will be omitted if, as is not unusual in such a case, the wife is not to have a power of appointment.

FOR ISSUE OF HUSBAND AND WIFE RESPECTIVELY BY ANY MARRIAGE.

paid to any wife of him who may survive him during her life, or for any less period: PROVIDED ALWAYS that any income payable to a future wife under any exercise of this power shall be payable out of that part of the husband's trust funds to which the issue of a future marriage or marriages of the said A. B. shall for the time being be entitled or presumptively entitled under these presents, or under any such appointment as aforesaid, so far as the same will extend, in exoneration of that part of the husband's trust funds to which the issue of the now intended marriage shall for the time being be entitled or presumptively entitled as aforesaid.

Income of wife's trust funds to go to wife and husband successively for life, and after death of survivor for issue of wife, &c.

5. THE trustees shall pay the income of the wife's trust funds to, &c. (*wife for life for her separate use, without power of anticipation, and after her death to husband for life, suprà*, p. 234), and after the decease of the survivor of them, the said A. B. and C. D. shall stand possessed of the wife's trust funds, IN TRUST, &c. (*Trusts for issue of wife by present or future marriage as she shall by deed or will appoint* [*and in default of such appointment, for issue of intended marriage as husband if he survives wife shall by deed or will appoint*], *and in default of such appointment, for children of wife by present and future marriages equally, as in Article* 3, *mutatis mutandis*). AND if, &c. (*Ultimate trust for wife or her appointees by will, or next of kin, suprà*, p. 235).

Power to wife to appoint life interest in moiety of wife's trust funds to future husband.

6. NOTWITHSTANDING, &c. (*Power to wife to appoint income of a moiety of wife's trust funds to future husband, as in Article* 4, *mutatis mutandis*).

Hotchpot clause.

7. No child who or any of whose issue shall take a share of any of the trust funds hereby settled under any appointment made by virtue of the foregoing powers in that behalf or any of them, shall take any share in the unappointed part if any of the said trust funds without bringing the share or shares appointed to him or her as to his or her issue into hotchpot and accounting for the same accordingly unless the persons or person making such appointment shall thereby direct the contrary.

Direction as to share of infant married daughters.

8. IF any daughter of the said A. B. and C. D. or of either of them shall marry while an infant, the trustees may, during the infancy of such daughter, retain the share (if any) to which she shall be entitled in possession under these presents, and pay the income thereof to her or to her husband at their discre-

FOR ISSUE OF HUSBAND AND WIFE RESPECTIVELY BY ANY MARRIAGE.

tion, for which income the receipt of such daughter or her husband, as the case may be, shall be a sufficient discharge.

Advancement clause.

9. The trustees may at any time or times raise any part or parts not exceeding together a moiety of the vested or presumptive share of any child or grandchild of the said A. B. and C. D. or either of them, and may apply the money to be so raised for the advancement, preferment, or benefit of such child or grandchild as the trustees shall think fit, but so that no such advancement shall be made during the continuance of any prior interest or interests under these presents in the money proposed to be advanced without the consent in writing of the person or persons having such prior interest or interests.

Power in case of no issue of intended marriage, for survivor to revoke trusts of his or her trust funds.

10. If there shall be no child of the now intended marriage, who, being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age, it shall be lawful for the said A. B., if he shall survive the said C. D., as to the husband's trust funds, or for the said C. D., if she shall survive the said A. B., as to the wife's trust funds, by any deed or deeds to revoke the trusts, powers and provisions declared and contained by and in these presents of and concerning the husband's trust funds or the wife's trust funds (as the case may be), and to declare new or other trusts concerning the same, but so that, as regards the said C. D. any such deed of revocation as aforesaid shall be executed after the decease of the said A. B.

(*Agreement to settle other property of wife, investment and appointment of new trustees clauses, and settlement to be void if marriage not within twelve months, suprà*, pp. 255 to 259).

In witness, &c.

No. XIX.

CONVEYANCE *and* ASSIGNMENT *by the intended* HUSBAND *of an* UNDIVIDED SHARE IN REMAINDER *of* FREEHOLDS *and* LEASEHOLDS *to* TRUSTEES *on trust to* SELL, *either* AFTER *the determination of the* PRIOR LIFE ESTATE, *or* DURING *its* CONTINUANCE *with the concurrence of the* TENANT FOR LIFE, *and to hold the* PROCEEDS *upon the* TRUSTS *declared by a* DEED *of* EVEN DATE (*a*).

CONVEYANCE OF UNDIVIDED SHARE IN REMAINDER OF FREEHOLDS AND LEASEHOLDS, IN TRUST FOR SALE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS a marriage has been agreed upon and is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS (*Recite will of X. Y. under which A. B. is entitled to an undivided third share of freeholds and leaseholds, subject to the life interest of R. B. his father*); AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said undivided part or share of the said A. B., of and in the said freehold and leasehold hereditaments should be respectively conveyed and assigned unto the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns respectively, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same: NOW THIS INDENTURE WITNESSETH as follows:—

Recite agreement and that share of freeholds and leaseholds should be conveyed and assigned to trustees.

Witnessing part.

Husband conveys share of freeholds (subject to prior life interest) to trustees.

1. IN consideration of the said intended marriage, the said A. B. as settlor hereby conveys unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"), ALL THAT the one undivided third part or share of the said A. B., of and in ALL, &c. (*Freehold parcels*): TO HOLD the same (subject to the said estate for life therein of the said R. B.) unto the trustees in fee simple, IN TRUST for the said A. B., in fee simple, until the said intended marriage: AND FROM AND AFTER the said marriage, UPON THE TRUSTS and with and subject to the powers

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(*a*) It is not necessary to insert in this deed powers of leasing or partition, as these are provided by the Settled Land Act, 1882.

CONVEYANCE OF UNDIVIDED SHARE IN REMAINDER OF FREEHOLDS AND LEASEHOLDS, IN TRUST FOR SALE.

and provisions hereinafter declared and contained concerning the same.

Husband assigns undivided share of leaseholds to trustees,

2. In consideration of the said intended marriage, the said A. B. as settlor hereby assigns unto the trustees, All that the one undivided third part or share of the said A. B., of and in All that, &c. (*describe leasehold parcels as in lease*); All which hereditaments and premises were by an indenture dated the —— day of ——, and made between, &c. (*parties*), demised unto the said (*testator*), for the term of ninety-nine years thence next ensuing, at the yearly rent of £——, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee to be observed and performed (*and all the estate*): To hold the same unto the trustees for the residue now unexpired of the said term of ninety-nine years, subject to the said estate for life therein of the said R. B., and subject also to a proportionate part of the said yearly rent of £——, reserved by the said indenture of lease, and to the covenants and conditions in the same indenture contained, and on the part of the lessee to be observed and performed, so far as the same affect the said undivided share hereby assigned, or expressed so to be, Nevertheless, In trust for the said A. B., until the said intended marriage, And from and after the said marriage, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

subject to prior life interest.

Trustees shall hold share of freeholds and leaseholds.

In trust to sell.

3. The trustees shall, upon the request in writing of the said A. B. during his life, and after his decease then upon the request in writing of the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D. at the discretion of the trustees sell the undivided part or share hereby conveyed and assigned of and in the said freehold and leasehold premises respectively, at any time or times after the decease of the said R. B. or in the lifetime of the said R. B., if he shall concur in such sale, but not otherwise, with liberty to sell the same part or share alone or in conjunction with the other undivided parts or shares of the said premises, or any or either of them, as the trustees shall think fit, and shall receive all the moneys to arise from the sale of the said undivided part or share, whether such sale shall be made in the lifetime of the said R. B. or after his death (including in the former case such portion of the said moneys as shall represent the life estate of the said R. B.), and

CONVEYANCE OF UNDIVIDED SHARE IN REMAINDER OF FREEHOLDS AND LEASEHOLDS, IN TRUST FOR SALE.

shall with and out of the said moneys in the first place pay and retain the costs and expenses attending such sale, and shall stand possessed of the residue of the said moneys, and also of the rents and profits of the said undivided part or share of and in the said premises, or such part thereof as shall not be sold in the lifetime of the said R. B. from and after the decease of the said R. B., and until the sale thereof, upon such trusts and with and subject to such powers and provisions as are or shall be declared concerning the same in and by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between, &c. (*parties*).

Power to lease.

4. UNTIL the said undivided part or share hereby conveyed and assigned of and in all the said freehold and leasehold premises shall be sold as aforesaid, the trustees shall permit the rents and profits, &c. (*to be received by husband and wife successively for life and then to hold same upon trust declared by deed of even date, suprà, p.* 264).

5. It shall not be necessary, &c. (*no notice of intended lease need be given to trustees, suprà, p.* 264).

6. THE power, &c. (*Clause as to appointment of new trustees, suprà*, p. 259).

IN WITNESS, &c.

No. XX.

APPOINTMENT *in contemplation of a* DAUGHTER'S MARRIAGE *of a* SUM *of* MONEY, *to be raised under the* TRUST *of a* TERM *for raising* PORTIONS *for* YOUNGER CHILDREN *contained in a* SETTLEMENT *of* REAL ESTATE, *to* TRUSTEES *upon* TRUSTS *declared by a* DEED *of even date* (*a*).

APPOINTMENT OF PORTION CHARGED ON REAL ESTATE.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN N. D., of, &c. (*father of intended wife*), of the first

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(*a*) See note, *suprà*, p. 248.

APPOINTMENT OF PORTION CHARGED ON REAL ESTATE.

part, C. D., of, &c. (*intended wife*), of the second part, A. B., of, &c. (*intended husband*), of the third part, and E. F., of, &c., and G. H., of, &c., and I. K., of, &c. (*trustees*), of the fourth part: Whereas by an indenture of release, dated the —— day of ——, grounded on a lease for a year, and made between the said N. D., of the first part, O. D., now the wife of the said N. D. (then O. P., spinster), of the second part, &c. (*other parties*) (being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said N. D. and the said O. P.), the manor of ——, and the capital and other messuages, lands, tenements, and hereditaments, situate in the parish of —— in the county of ——, in the said indenture particularly described, were settled and assured to the use of the said N. D. during his life, without impeachment of waste, with remainder after his decease to the use that the said O. P., if she should survive the said N. D., should receive thereout, during her life, a yearly rent-charge of £—— for her jointure, with usual powers for recovering the same when in arrear, and subject thereto, to the use of the said P. Q. and R. S., their executors, administrators, and assigns, for the term of one thousand years, computed from the decease of the said N. D., upon the trusts therein declared concerning the same, and in part hereinafter mentioned, with remainder to the first and other sons of the said N. D. by the said O. P. successively in tail male, with remainders over; and it was declared that the said premises were limited to the said P. Q. and R. S., their executors, administrators, and assigns, for the said term of one thousand years as aforesaid, upon trust, in the first place, to secure in manner therein mentioned, the regular payment of the said yearly rent-charge of £——, and in the next place, upon trust that if there should be any child or children of the said N. D. by the said O. P. (other than an eldest or only son entitled for the time being to the first estate tail in the said hereditaments under the limitations of the said indenture), then and in such case the said P. Q. and R. S., or the survivor of them, or the executors or administrators of such survivor, should after the decease of the said N. D., or in his lifetime upon his request in writing, levy and raise, in manner therein mentioned, as and for the portion or portions of such child or children (other than as aforesaid) the sum of

APPOINTMENT OF PORTION CHARGED ON REAL ESTATE.

That there are six younger children, and intended wife is one.

Agreement for appointment and settlement.

Witnessing part.

Father appoints portion to daughter to be a vested interest on marriage, and to be paid to trustees upon trusts of deed of even date.

money therein and hereinafter mentioned (that is to say), if there should be but one such child, the sum of £——, and if there should be two such children and no more, the sum of £——, and if there should be three or more such children, the sum of £——: the sum of £——, £——, or £——, as the case might be, to go and be paid to all or any of the children of the said N. D. by the said O. P., in such shares, and in such manner as the said N. D. should by any deed or deeds, with or without power of revocation and new appointment, or by his will, appoint: AND WHEREAS there are six children of the said N. D. by the said O., his wife (other than and besides their eldest son): AND WHEREAS a marriage is intended shortly to be solemnized between the said C. D., who is one of the said children and the said A. B.: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said N. D. should appoint the sum of £——, part of the money raiseable for portions as aforesaid, as the share of the said C. D., and that the said C. D. should settle the same upon the trusts hereinafter mentioned, and it was further agreed that the appointment should be made at the request of the said C. D. directly to the said E. F., G. H., and I. K., as the trustees of the said intended settlement in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH that the said N. D., in exercise and execution of the power for this purpose vested in him by the said indenture of settlement as aforesaid, and of all other powers (if any) him hereunto enabling, doth hereby at the request of the said C. D. (testified by her executing these presents) Appoint, that if the said intended marriage between the said C. D. and A. B. shall take effect before the expiration of twelve calendar months from the date of these presents, the sum of £——, part of the money by the said indenture directed to be raised for the portions of younger children as aforesaid, shall be the portion of the said C. D., and shall, upon the decease of the said N. D., be paid to the said E. F., G. H., and I. K., with interest thereon after the rate of £4 per cent. per annum, computed from the decease of the said N. D., to be held by them upon such trusts, and with and subject to such powers and provisions as are or shall be expressed and declared concerning the same by an indenture already prepared and engrossed, bearing or intended

APPOINTMENT OF PORTION CHARGED ON REAL ESTATE.

to bear, even date with these presents, and made, or intended to be made between, &c. (*parties*).

Clause as to appointment of new trustees.

And it is declared that (*Clause as to appointment of new trustees, suprà*, p. 232).

In witness, &c.

No. XXI.

SETTLEMENT OF PROCEEDS OF SALE OF REVERSIONARY SHARE OF FREEHOLDS AND LEASEHOLDS, ETC.

SETTLEMENT *by the intended* Husband *of the* Proceeds *of sale of a Share of* Freeholds *and* Leaseholds *conveyed to* Trustees *in trust for Sale by Deed of even date, and by the intended* Wife *of a* Portion Charged *on* Real Estate.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part:

Recital of intended marriage.

Deed of even date being conveyance by husband of reversionary moiety of freeholds and leaseholds upon trust for sale.

Whereas a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: And whereas by an indenture bearing even date with these presents, and made between, &c., the said A. B., in consideration of the said intended marriage, has conveyed and assigned one undivided third part or share of and in certain freehold and leasehold hereditaments therein described unto the said E. F., G. H., and I. K., subject to the estate for life therein of R. B. (the father of the said A. B.), Upon trust after the solemnization of the said intended marriage, that the trustees shall upon such request or at such discretion as therein mentioned, sell the said undivided part or share of and in the said several freehold and leasehold premises at any time or times after the decease of the said R. B., or in his lifetime if he shall concur in the said sale, but not otherwise: And shall receive all the moneys to arise from the sale of the said undivided share, whether such sale shall be made in the lifetime of the said R. B., or after his death (including in the former case such portion of the said moneys as shall represent the life estate of the said R. B.), and shall with and out of the said moneys in the first place pay and retain the costs and expenses attending such sale, and shall stand possessed of the residue of the said moneys, upon the trusts, and with and subject to the powers and provisions to be declared concerning the same by an indenture therein mentioned, meaning these presents, and upon trust in the meantime, and until such sale, to permit the rents and profits of the premises to be received by the said A. B. during her life and after her decease by the said C. D. during her life and after the decease of the survivor of the said A. B. and C. D. to stand possessed of the said rents and profits upon the trusts declared concerning the same by the said indenture, meaning these presents: And whereas by another indenture bearing even date with these presents, and made between, &c. (*parties*), the said N. D. has at the request of the said C. D. and A. B. appointed the sum of £——, part of a sum of money raiseable for portions under an indenture of settlement therein referred to and charged on real estate, and which sum of £—— will become payable on the decease of the said N. D. unto the said E. F., G. H., and I. K., upon the trusts, and with and subject to the powers and provisions declared concerning the same by an indenture therein mentioned, meaning these presents: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, It is hereby agreed and declared as follows:—

Another deed of even date being appointment of portion to trustees by direction of wife.

Witnessing part.

Declaration that trustees shall invest proceeds of sale of share of freeholds and leaseholds.

1. If the undivided part or share conveyed and assigned by the first hereinbefore recited indenture of and in the said freehold and leasehold premises respectively, or any part thereof, shall be sold after the decease of the said R. B., the said E. F., G. H., and I. K. (hereinafter called "the trustees"), shall, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees invest the said moneys when and as the same respectively shall be received, in the names of the trustees in some or one of the modes of investment hereinafter authorized, with power from time to time, with such consent or at such discretion as aforesaid, to vary the said investments into or for others of the same or a like nature. The said moneys hereinbefore directed to be invested, and the stocks, funds, and securities for the time being representing the same, are hereinafter called the "husband's trust funds."

SETTLEMENT OF PROCEEDS OF SALE OF REVERSIONARY SHARE OF FREEHOLDS AND LEASEHOLDS, ETC.

Trustees to receive portion of wife and invest, &c.

2. The trustees shall, upon the receipt of the said sum of £——, appointed by the secondly hereinbefore recited indenture, invest the same in, &c. (*Trust for investment and power to vary investments, as in last article*). The said sum of £——, and the stocks, funds, and securities for the time being representing the same are hereinafter called the "wife's trust funds."

Trusts of rents until sale.

3, 4, 5. (*Trusts and powers as in Precedent No. XI., Articles* 3, 4, 5, *suprà*, pp. 254, 255.)

6. If the said part or share of and in the said freehold and leasehold premises respectively, or any part thereof, shall remain unsold at the decease of the survivor of the said A. B. and C. D. the trustees shall until the sale thereof pay the net rents and profits thereof, to the person or persons and in the manner to whom and in which the income of the moneys produced by the sale thereof would for the time being be payable or applicable under the foregoing trusts if such sale had been made.

Declaration of trusts in case of a sale during life of tenant for life.

7. If the said part or share of and in the said freehold and leasehold premises, or any part thereof, shall be sold in the lifetime of the said R. B., then and in such case the trustees shall stand possessed of the moneys to arise from such sale, Upon the same trusts and with and subject to the same powers and provisions as are hereinbefore declared and contained concerning the moneys to arise from any sale which may be made after the decease of the said R. B. of the same undivided part or share, save and except that every investment or variation of investment of the said moneys made in the lifetime of the said R. B., shall be with his consent in writing, as well as with the consent in writing of the said A. B. and C. D., or the survivor of them, and that the income of the said moneys, or the investments for the time being representing the same shall be paid to the said R. B. during his life.

8, 9. (*Clauses as to investments and appointment of new trustees, suprà*, pp. 257 to 259.)

Settlement to be void, if marriage not solemnized within twelve months.

10. These presents shall be void if the said intended marriage shall not be solemnized within twelve calendar months from the date hereof.

In witness, &c.

No. XXII.

SETTLEMENT *by intended* WIFE *of a share of the* PROCEEDS *of* RESIDUARY REAL *and* PERSONAL ESTATE *under a* WILL; *with* SPECIAL POWERS *in relation to the* RESIDUARY ESTATE.

SETTLEMENT OF SHARE OF RESIDUARY ESTATE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS under or by virtue of the last will and testament of her uncle, X. Y., deceased, the said C. D. is beneficially entitled to a moiety of the moneys to arise from the sale and conversion into money of the residuary real and personal estate of the said X. Y., which shall remain after payment of his debts and funeral or testamentary expenses, and the legacies bequeathed by his said will, but the amount or particulars of such residuary estate cannot at present be ascertained: AND WHEREAS upon the treaty for the said intended marriage, it was agreed that such settlement should be made as is hereinafter expressed: NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH and declares as follows:—

Recite agreement for marriage. That intended wife is entitled to a share of residuary estate under will. Agreement for settlement. Witnessing part.

1. THE said C. D., as settlor, hereby assigns unto the said E. F., G. H., and I. K. (hereinafter called "the trustees of these presents"), ALL THAT the moiety of her the said C. D., under or by virtue of the said will of the said X. Y., deceased, of and in the moneys to arise from the sale and conversion into money of the residuary real and personal estate of the said X. Y., and the stocks, funds, or securities in or upon which the same, or any part thereof, may be invested or laid out, and the accumulations, if any, of the same: TO HOLD the same unto the trustees of these presents, IN TRUST for the said C. D., until the said intended marriage, and after the solemnization thereof, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Assignment by intended wife of moiety of residuary estate.

To trustees upon trusts after declared.

2 to 7. (*Usual trusts and powers in settlement of a wife's fortune as in one of the former Precedents.*)

SETTLEMENT OF SHARE OF RESIDUARY ESTATE.

Power to trustees to make arrangements with executors of will as to the distribution of the testator's estate.

8. THE trustees of these presents may, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, make or concur in any arrangement with the executor or executors, or trustees or trustee for the time being of the said will of the said X. Y., or the residuary legatee or legatees under the said will (other than the said C. D.), or any of them, for or in relation to the distribution and partition of the real and personal estate of the said X. Y., or the proceeds thereof, and may accept and take any part of the said real and personal estate in lieu of and by way of satisfaction for the moiety hereby assigned by the said C. D. of and in the proceeds of the said estate, without insisting upon a sale and conversion of the said real and personal estate and the division of the proceeds thereof in strict accordance with the directions of the said will, and in case any freehold, copyhold, or leasehold hereditaments shall be acquired by the trustees of these presents by virtue of any such arrangement as aforesaid, such freehold, copyhold, or leasehold hereditaments shall be held by the said trustees upon the same trusts and with and subject to the same powers and provisions as are hereinbefore declared and contained concerning any hereditaments to be purchased with the proceeds of the trust premises hereby settled by the said C. D. under the power in that behalf hereinbefore contained, and in case any personal chattels shall be acquired by the said trustees under any such arrangement as aforesaid, the said trustees may retain the same unconverted for so long as they shall think fit, and shall permit the same while remaining unconverted to be enjoyed by the person or persons who would for the time being be entitled to the income of the proceeds of the conversion thereof if such conversion had been made: AND it shall not be incumbent on the said trustees to see or to inquire into the state and condition of any such personal chattels, or to make or cause to be made any schedules or inventories thereof, or to take any steps whatever for the preservation of the same, unless the said trustees shall think fit, nor shall they or he be responsible for any loss or injury whatsoever which may happen to or in respect of the same chattels or any of them.

Special powers to

9. THE trustees of these presents may, with such consent or

trustees as to share in residuary real, and personal estate.

at such discretion as aforesaid, accept payment of the moiety hereby assigned by the said C. D. of and in the said residuary estate and effects, or any part or parts thereof respectively, either together in an aggregate amount, or by instalments, and may give such time for the payment thereof or the instalments thereof, and upon such terms as to interest, and either with or without requiring any security for the same or otherwise, as the said trustees may deem fit or expedient, AND also with such consent, or at such discretion as aforesaid, may accept any part or parts of the property representing the moiety of the said C. D. in the estate and effects of the said X. Y., by way of composition for and in satisfaction of the whole of the same, if from any unforeseen circumstances the said trustees shall deem it necessary or expedient so to do, and on receipt of the whole or any part or parts thereof, whether in full or by way of composition as aforesaid, may give and execute all such releases and discharges as may be reasonably required by the person or persons paying or transferring the same, or, as the said trustees or trustee may think proper to give and execute, and also may pass and allow the accounts of the executor or executors, or trustee or trustees, of the said will of the said X. Y. relating to the estate and effects of the said X. Y., or dispute or disallow the same, and also may institute or defend all such actions, or other proceedings for the recovering of the moiety of the said C. D. of and in the said estate and effects, or any part thereof, or in relation thereto, as the trustees or trustee for the time being of these presents shall deem expedient, and may compromise, compound, and submit to arbitration all such questions, disputes, doubts, or differences as may arise in relation to the premises or any part or parts thereof, and generally act in relation thereto as they shall think fit: AND in case any question shall arise whether any money or other property received by the trustees or trustee for the time being of these presents in respect of the estate and effects of the said X. Y. ought to be treated as *corpus* or income for the purposes of these presents, every or any such question shall be decided by the said trustees or trustee in such manner as they or he under the advice of counsel or otherwise shall think proper: AND every act, deed, and thing, done or executed by the trustees or trustee for the time being of these presents under any of the powers

SETTLEMENT OF SHARE OF RESIDUARY ESTATE.

hereinbefore contained (including any decision as to whether any such money or property as aforesaid ought to be treated as *corpus* or income), shall be binding on all the persons beneficially interested under the trusts of these presents.

10. (*Appointment of new trustees clause, suprà*, p. 259).

Settlement to be void if marriage not within twelve months.

11. If the said intended marriage shall not be solemnized within twelve calendar months from the date thereof, then and in such case these presents shall be void, and the premises hereby settled by the said C. D. shall remain her absolute property.

In witness, &c.

No. XXIII.

OF PERSONALTY WITH POWER TO PURCHASE ADVOWSON.

SETTLEMENT *of* Personalty, *with* Power *to* Trustees *to purchase an* Advowson, *and* Trusts *of same.*

Parties.

THIS INDENTURE, made the —— day of ——, Between the Rev. A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part (*the same as Precedent No. II. or any of the preceding Precedents, down to the end of the ordinary trusts and powers,—Power to invest in the purchase of land*): Provided always, and it is hereby agreed and declared, that it shall be lawful for the trustees at any time during the life of the said A. B., upon his request in writing, and with the consent of the said C. D., if she shall be then living, to raise by the sale or conversion into money of a competent part of the trust funds and premises for the time being subject to the trusts of these presents [or the trust funds and premises hereby settled on the part of the said A. B.], any sum of money not exceeding the sum of £——, and to apply the same in the purchase of the advowson or perpetual right of presentation to any ecclesiastical benefice in England or Wales to be conveyed to the trustees, and to be held by them upon the trusts following (that is to say), Upon trust that the trustees shall, upon the request in writing of the said A. B. and C. D.,

Power to trustees to purchase advowson.

Trustees to hold advowson when

during their joint lives, or of the survivor of them during his or her life, and from and after the decease of such survivor, then at the discretion of the trustees, sell the same advowson or perpetual right of presentation, or the next one or more presentation or presentations to the same benefice, and shall stand possessed of the proceeds of such sale or sales, after payment of the expenses attending the same, upon the same trusts and with the same powers and provisions as the money laid out in the purchase of such advowson or perpetual right of presentation would have been subject to if the same had not been so laid out: and in the meantime, and until such sale as aforesaid, and in case of any sale of a next presentation, then subject to such sale, IN TRUST for the said A. B. during his life, and after his decease IN TRUST for the person or persons who, if the said advowson had been sold, would for the time being be entitled under these presents to the income of the trust funds representing the proceeds thereof, and so that during the minority of any person who if of full age would for the time being be entitled to nominate or join in the nomination to the said benefice under the trusts now being declared, the guardian or guardians of such minor shall have the like right to nominate or join in the nomination as the minor would have had if he or she had been of full age (*a*): PROVIDED ALWAYS, and it is

OF PERSONALTY WITH POWER TO PURCHASE ADVOWSON

purchased in trust to sell

and until sale

in trust for husband for life, and after his decease upon trust for persons who would be entitled to income of proceeds of sale if advowson had been sold.

Proviso that it may be

(*a*) In the early editions of this work, the trusts of the advowson in the above Precedent were in the form of a direction to present certain specified or indicated persons so long as it should remain unsold. Trusts of this kind are not uncommon, particularly in wills. Their validity does not appear to have been questioned in any reported case, but it is conceived that if it were so, there would be some difficulty in sustaining them. A right of presentation is a right coupled with a public duty, and it is conceived that any agreement or arrangement by which a patron is prevented, when a vacancy happens, from selecting such clerk as he may conscientiously believe to be the most proper individual for supplying the living, would be held void independently of the statutes against simony, as contrary to public policy. See the judgment of Hullock, B., Fletcher *v.* Lord Sondes, 1 Bligh, N. S. 190. Speaking of a bond of resignation (which was decided to be void), the learned judge says:—"The patron thereby becomes precluded from choosing the most proper individual for supplying the living. If he act in the presentation according to the condition of the bond, his choice is fixed long before the fitness of the object can be ascertained. At the execution of the bond, the nominee may be at college, or perhaps at school, or perhaps in his cradle." Special bonds of resignation are now rendered valid by statute under certain conditions; but the force of the above reasoning is not thereby diminished, and it applies with still greater force, to a trust of the kind above referred to, than to a bond of resignation; because, under the latter, the patron has the option whether to enforce it or not: whereas,

Trusts to present a particular person to a benefice whether valid.

OF PERSONALTY WITH POWER TO PURCHASE ADVOWSON.

made part of arrangement on purchase of advowson, that vendor shall pay interest on purchase money until vacancy, or that purchase money shall be invested until vacancy and income received by purchaser.

hereby agreed and declared, that if the trustees shall think fit, it may, with the consent in writing of the said A. B., and of the said C. D., if she shall be then living, be made part of the arrangement on the purchase of such advowson as aforesaid, either that the vendor shall receive the purchase-money upon the completion of the purchase, and pay to the trustees interest thereon, computed from the time of such payment, until a vacancy shall happen in the benefice the advowson whereof shall be so purchased as aforesaid, after such rate not exceeding £5 per cent. per annum, and to be secured in such manner as shall be agreed upon between the parties, or that the purchase-money shall be paid to the vendor upon and not before the happening of such vacancy, and shall in the meantime be invested in the names of trustees to be nominated for that purpose, UPON TRUST to pay the annual income thereof to the trustees of these presents until the happening of such vacancy, and from and after such vacancy, IN TRUST for the vendor (*Provision as to appointment of new trustees, suprà*, p. 232).

IN WITNESS, &c.

under the former, the trustee is absolutely tied to present the particular person. See also, Potter *v.* Chapman, Ambler, 100. In the case of Webb *v.* Byng, 2 K. & J. 669, a testatrix gave to A. the "livings" of Q. and C., should he like the profession, and be qualified for them. Wood, V.-C., held that the devise was confined to a single presentation, and did not extend to the advowson, as the words "should he like," &c., showed an intention to confer on the devisee a personal benefit, which could only be effected by his being himself presented. This case seems to have decided that the testatrix, by the gift of the livings to A. meant that A. should be presented, which intention could only, it is apprehended, be carried into effect by supposing a trust vested in the heir-at-law for that purpose. The question whether such a trust could be enforced, does not seem to have been raised; and it is submitted, therefore, that this case is not an authority against the view expressed in the former part of this note. Having regard to the above observations, it is submitted that when an advowson is made the subject of a settlement, or is authorized to be purchased out of the trust funds, the deed should simply declare who are to be the *cestuis que* trust of such advowson, *i.e.*, of the right to present, and not who are the persons to be presented. A *cestui que* trust of the right could nominate himself and the trustee would be bound to present him; all that is necessary being that the beneficial patron, for the time being, should have a free choice.

No. XXIV.

OF MONEY IN NEW ZEALAND.

SETTLEMENT *of a sum of Money transmitted to Trustees in* NEW ZEALAND *for the benefit of the* WIDOW *and* CHILDREN *of the Settlor's deceased* SON. —*Ample powers of* INVESTMENT,—INCOME *to be applied for the benefit of* WIDOW *and* CHILDREN *until youngest Child attains twenty-one, and then* ANNUAL SUM *to be paid to* WIDOW *during* WIDOWHOOD; *and subject thereto,* TRUST FUND *to go to* CHILDREN.—POWER *to* SETTLOR *to* REVOKE *and* DECLARE NEW TRUSTS *for benefit of same objects.*

Parties. Recite death of settlor's son, leaving widow and children. That settlor has transmitted money to trustees. Witnessing part. Settlor directs trustees to hold money upon following trusts.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of ——, in England, Esq. (*settlor*), of the one part, and C. D., and E. F., both of ——, in New Zealand, gentlemen (*trustees*), of the other part: WHEREAS G. B. (a son of the said A. B.) lately died in New Zealand, leaving H. B. his widow, and leaving also four children by the said H. B.: AND WHEREAS the said A. B. has lately transmitted the sum of £—— to the said C. D. and E. F. to the intent that they may stand possessed thereof upon the trusts and with and subject to the powers and provisions hereinafter expressed concerning the same: NOW THIS INDENTURE WITNESSETH, that IT IS HEREBY AGREED AND DECLARED, and in particular the said A. B. in consideration of his natural love and affection for the objects of the settlement intended to be hereby made doth hereby direct and declare, that the said C. D. and E. F., their executors, administrators, and assigns, shall stand possessed of the said sum of £——, UPON the trusts and with and subject to the powers and provisions expressed in the following articles (that is to say),—

Trustees to invest money.

1. THE said C. D. and E. F., or the survivor of them (hereinafter called "the trustees or trustee"), shall invest the said sum of £—— in their or his names or name or under their or his control upon any government real or personal securities whether in the United Kingdom or in New Zealand as the trustees or trustee shall in their or his discretion think fit, and may from time to time vary the said securities for any other securities of the like nature. The said sum of £—— and the securities

upon which the same shall from time to time be invested are hereinafter called "the trust fund."

During minority of youngest child, income to be applied for benefit of widow and children at discretion of trustees.

2. THE trustees or trustee shall during the minority of the youngest child for the time being of the said G. B. deceased, apply the whole or such part as they or he shall think fit of the income of the trust fund for or towards the support, maintenance, and benefit of the said H. B. and the children of the said G. B. deceased, or any one or more exclusively of the other or others of them the said H. B. and the said children, in such manner in all respects as the trustees or trustee shall in their or his absolute discretion think fit, and shall accumulate the surplus (if any) of the said income by investing the same and the resulting income thereof in manner aforesaid, to the intent that the accumulations shall be added to the principal trust fund and follow the destination thereof, with liberty nevertheless for the trustees or trustee at any time or times to resort to the accumulations of any preceding year or years, and apply the same for the support, maintenance, and benefit of the said H. B. and the said children or any one or more of them.

When youngest child attains twenty-one, annual sum to be paid to widow during widowhood.

3. IF the said H. B. shall be living and shall not have married again at the time when the youngest child for the time being of the said G. B. deceased attains the age of twenty-one years, the trustees or trustee shall thenceforth out of the income of the trust fund (including the said accumulations if any) pay to the said H. B. the annual sum of £—— during her life if she shall so long continue the widow of the said G. B. deceased.

Subject to annual sum, trust fund to go to children equally.

4. SUBJECT to the annual sum provided by Article 3, if and while the same shall be payable, the trust fund (including the said accumulations if any) shall when and so soon as the youngest child for the time being of the said G. B. deceased attains the age of twenty-one years, go and be divided among all the children of the said G. B. deceased, who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares, and so that the share of each such child shall be a vested and transmissible interest in such child being a son upon his attaining the age of twenty-one years, or being a daughter upon her attaining that age or marrying (which shall first happen), notwithstanding that he or she may die before the period of distribution.

Power to trustees,

5. THE trustees or trustee may at any time or times during

the minority of the youngest child for the time being of the said G. B. deceased, with the consent in writing of the said H. B. during her widowhood, and after her second marriage or death (which shall first happen) at the discretion of the trustees or trustee, raise out of the trust fund any sum or sums of money and apply the same for the advancement or benefit of any child of the said G. B. deceased, and any sum or sums of money so applied for the advancement or benefit of any child shall be taken in part satisfaction of the ultimate share of such child in the said trust fund.

With consent of widow, and after her death or second marriage at their discretion to raise money for advancement of children.

6. If no child shall attain a vested interest in the trust fund, the same (including the said accumulations), shall, subject to the trusts and powers hereinbefore declared and contained, revert to and be held in trust for the said A. B., his executors, administrators, and assigns.

If no child attains a vested interest, trust fund to revert to settlor.

7. The trustees or trustee may at any time or times at their or his discretion lay out the said trust fund (including the said accumulations) or any part thereof in the purchase of any real or personal property in the United Kingdom or in New Zealand of what nature or kind soever, and the trustees or trustee shall stand possessed of any property to be purchased as aforesaid, upon trust that they or he shall re-sell the same or any part thereof when and as they or he shall think fit, and shall stand possessed of the money to arise from such re-sale, upon the same trusts and with the same powers as are herein declared and contained concerning the said sum of £—— hereby settled, including the aforesaid power of purchasing property, and shall in the meantime and until such re-sale pay and apply the rent or income arising from the property to be purchased as aforesaid to the person or persons and in the manner to whom and in which the income of the money laid out in the purchase of such property would for the time being be payable under the trusts of these presents if such purchase had not been made.

Power to trustees to purchase any property in the United Kingdom or New Zealand as an investment.

8. The trustees or trustee may demise or let any land, or other property purchased under the aforesaid power and which shall remain unsold, for such term or terms of years at such rent or rents, and upon such conditions in all respects as they or he may think fit.

Trustees may let any property purchased.

9. Any sale of property hereby authorised to be sold may be made either by public auction or private contract, and subject

Mode of effecting sales.

OF MONEY IN NEW ZEALAND.

to any conditions as to title or otherwise, and the trustees or trustee may buy in any property offered for sale by auction, and may vary any contract for sale of any property, and may re-sell the same property without being answerable for any loss arising thereby, and may execute assurances, give effectual receipts for the purchase-money, and do all other acts and things for effectuating any such sale which they or he may think proper.

Power to trustees to settle differences and questions.

10. THE trustees or trustee may compromise or compound any action, suit, proceeding, difference or demand relating to the trust fund or property, or any part thereof, upon any terms which they or he shall think proper, and may refer any such difference or demand to arbitration, and may execute and do all instruments and things expedient for such purposes, or any of them, and in all cases in which any question of law or equity shall arise relating to the said trust fund or property, or any part thereof, may settle and arrange the same in such manner as they or he shall think fit, and may abandon or relinquish any claim and may adjust, settle, and approve all accounts relating to the said trust fund or property, or any part thereof, and may determine whether any money shall for the purposes of these presents be considered income or otherwise, and may execute and do all releases and things relating to the said trust fund or property as fully and absolutely as the trustees or trustee could do if they or he were or was the absolute owners or owner thereof, and without being answerable for any loss which may be occasioned thereby.

Power to appoint new trustees.

11. IF the trustees hereby constituted or either of them or any future trustee or trustees of these presents shall die or desire to retire from or refuse or become incapable to act in the trusts hereof before the same shall be fully satisfied, then, and in every such case, it shall be lawful for the said A. B. during his life, and after his decease for the surviving or continuing trustee or trustees for the time being of these presents, or if there shall be no surviving or continuing trustee, then for the executors or administrators, executor or administrator, of the last surviving trustee, or for the refusing or retiring trustee or trustees, to appoint one or more person or persons to be a trustee or trustees in the place of the trustee or trustees so dying or desiring to retire or refusing or becoming incapable to act as aforesaid, and every such new trustee shall have all the powers and authorities of the trustee in whose place he shall be substituted.

12. THE trustees or trustee shall not be answerable the one for the other of them nor for the insufficiency of any security which they or he may acquire under the trusts or powers of these presents, nor for any other involuntary loss, and they may reimburse themselves out of the trust premises all costs and expenses incurred in or about the execution of the trusts of these presents.

Trustees indemnity clause.

13. THE said A. B. may at any time during his life by any deed or deeds with or without power of revocation and new appointment revoke either wholly or partially the trusts and powers hereby declared concerning the trust fund hereby settled, or the moneys or property for the time being representing the same, and by the same or any other deed or deeds may appoint and declare any new or other trusts or powers concerning the trust premises to which such revocation shall extend as to him shall seem meet: but so that such new or other trusts or powers shall be for the benefit of the said H. B. and the children and remoter issue of the said G. B. deceased, or some or one of them.

Power to settlor to revoke and declare new trusts in favour of the widow or issue of deceased son of settlor.

IN WITNESS, &c.

No. XXV.

SETTLEMENT *of* WIFE'S FREEHOLD *and* LEASEHOLD PROPERTY *and other* PERSONAL ESTATE *upon* TRUSTS *giving the* HUSBAND *and* WIFE *a* JOINT POWER *of* DISPOSITION *and subject thereto for* WIFE *for life, then for* HUSBAND *for life, and then for* WIFE *absolutely or her* APPOINTEES *but* WITHOUT *any* TRUSTS *for* CHILDREN.

OF WIFE'S PROPERTY WITHOUT TRUSTS FOR CHILDREN.

THIS INDENTURE, made the —— day of ——, between C. D., of, &c. (*intended wife*), of the first part, A. B., of, &c. (*intended husband*), of the second part, and E. F., of, &c., G. H., of &c., and I. K., of, &c. (*trustees*), of the third part. (*Recite agreement for marriage.*) AND WHEREAS the said C. D. is seised in

Parties.

Recital of title.

Agreement for settlement.

fee simple of the freehold hereditaments described in the first schedule hereto, and she is possessed of the leasehold hereditaments described in the second schedule hereto for the residue of the terms of years subsisting therein respectively, and she is also possessed of or entitled to the stocks, funds, and securities specified in the third schedule hereto: And whereas upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed, and with a view to the said intended settlement the stocks, funds and securities specified in the third schedule hereto have been transferred into the names of or otherwise made to vest in the parties hereto of the third part before the execution of these presents:

NOW THIS INDENTURE made in consideration of the said intended marriage WITNESSETH and declares as follows:

Conveyance of freeholds, to such uses as husband and wife shall jointly appoint, and subject thereto, to use of wife for life, then to husband for life, with remainder to wife in fee simple.

1. The said C. D., as settlor, hereby conveys unto the said parties hereto of the third part (hereinafter called "the trustees"), all those freehold hereditaments described in the first schedule to these presents: To hold the same unto the trustees in fee simple, To the use of the said C. D. in fee simple until the said intended marriage, and after the said marriage To such uses as the said A. B. and C. D. shall by any deed or deeds jointly appoint, and in default of and until such appointment and so far as any such appointment shall not extend, To the use of the said C. D. during her life (*a*) without impeachment of waste; And after her decease to the use of the said A. B. during his life without impeachment of waste with remainder To the use of the said C. D. in fee simple.

Assignment by wife of leaseholds.

To trustees.

2. The said C. D., as settlor, hereby assigns unto the trustees, The leasehold hereditaments described in the second schedule hereto: to hold the same unto the trustees for all the residue now unexpired of the several terms of years subsisting therein respectively under the several leases mentioned and referred to in the said second schedule, subject nevertheless to the rents reserved by the said leases respectively and to the covenants and conditions in the said leases respectively contained, and on the lessees' part to

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(*a*) The words "for her separate use" are not necessary since the Married Women's Property Act, 1882.

be observed and performed; Nevertheless IN TRUST for the said C. D. until the said intended marriage, AND after the solemnization thereof IN TRUST for such person or persons and in such manner as the said A. B. and C. D. shall by any deed or deeds jointly appoint: AND in default of and until such appointment, and so far as any such appointment shall not extend In trust with and out of the rents and profits of the said premises to pay the rents and observe and perform the covenants by and in the said leases reserved and contained, and on the lessees' part to be paid, observed, and performed and subject thereto, IN TRUST for the said C. D. during her life, and after her death IN TRUST for the said A. B. if he shall survive the said C. D. during his life, AND after the death of the survivor of the said A. B. or C. D., IN TRUST for such person or persons and in such manner as the said C. D. by any deed or deeds, or by her will shall appoint, and in default of and until such appointment and so far as any such appointment shall not extend, IN TRUST for the person or persons who under the statutes for the distribution of the effects of intestates would have been entitled thereto at her death if she had died possessed thereof intestate and without having been married, such persons if more than one to take as tenants in common in the shares in which the same would have been divisible between them under the said statutes.

OF WIFE'S PROPERTY WITHOUT TRUSTS FOR CHILDREN.

Upon similar trusts.

With ultimate trust for next of kin of wife.

3. THE trustees shall stand possessed of the stocks, funds, and securities specified in the third schedule to these presents, In trust for the said C. D., until the said intended marriage shall be solemnized, AND after the solemnization thereof shall either retain the same or with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the trustees, sell, call in, and convert into money the same, and invest the moneys to arise thereby in some or one of the modes of investment hereinafter authorised, with power with such consent, or at such discretion as aforesaid, to vary such investments from time to time into or for others of the same or a like nature, And shall stand possessed of the said stocks, funds, and securities, and the investments for the time being representing the same, IN TRUST to pay the income thereof to the said C. D. during her life, &c. (*similar trusts to those of leaseholds in Article* 2).

Declaration of trust of other personal estate upon similar trusts to the leasehold.

OF WIFE'S PROPERTY WITHOUT TRUSTS FOR CHILDREN

4, 5. (*Investment clause and power to appoint new trustees, suprà*, pp. 257, 259.)

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.
(*To comprise the freehold property.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.
(*To comprise the leasehold property.*)

THE THIRD SCHEDULE ABOVE REFERRED TO.
(*To comprise the stocks and securities and other personal estate.*)

No. XXVI.

OF FURNITURE.

SETTLEMENT *of* FURNITURE (*a*) *belonging to the* WIFE (1) *upon such* TRUSTS *as* WIFE *shall* APPOINT, *and in* DEFAULT *of* APPOINTMENT, *for* WIFE *for* LIFE *for* SEPARATE USE, *and then for her* CHILDREN, *and if no child, for her* NEXT OF KIN: POWER OF SALE—*and* (2) *upon* TRUST *for* WIFE *for life for* SEPARATE USE, *then for* HUSBAND *for life, and then for* CHILDREN *as* WIFE *shall* APPOINT, *and in default of appointment equally, and if* NO CHILD, *for* APPOINTEES *or* NEXT OF KIN *of* WIFE. POWER OF SALE.

Parties.

Intended wife assigns furniture to trustees.

THIS INDENTURE, made the —— day of ——, BETWEEN C. D., of, &c. (*intended wife*), of the first part, A. B., of, &c. (*intended husband*), of the second part, and E. F., of, &c., and G. H., of, &c. (*trustees*), of the third part, WITNESSETH that, in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said

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(*a*) A settlement of furniture is seldom desirable, particularly as, since the Married Women's Property Act, 1882, it will remain the wife's separate property.

C. D., as settlor (with the privity of the said A. B.), hereby assigns unto the said E. F. and G. H. (hereinafter called "the trustees"), all the furniture, chattels, and effects in and about the messuage or dwelling house, No. 1, —— Street, in the Town of —— which are mentioned and specified in the schedule hereunder written: To HOLD the same unto the trustees.

In trust for appointees of wife,

IN TRUST for such person or persons, and in such manner as the said C. D. shall, notwithstanding her intended coverture, by any writing under her hand or by her will appoint: AND in default of, and until such appointment, and so far as any such appointment shall not extend: IN TRUST to permit the said C. D. to use and enjoy the said premises during her life for her sole and separate use: AND after her decease, IN TRUST for her child or children who shall attain the age of twenty-one years, and if more than one in equal shares: AND if there shall be no such child then, IN TRUST for the person or persons who under the statutes for the distribution of the effects of intestates would have been entitled thereto at her death if she had died possessed thereof intestate, and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the said statutes:

and in default of and until appointment for wife for her separate use and then for her children or next of kin.

Power to trustees sell.

PROVIDED ALWAYS that the trustees may at any time, with the consent of the said C. D. during her life, and after her death, at their own discretion, sell the said premises hereby assigned or any of them, and in case of any such sale, shall invest the net proceeds in some or one of the stocks, funds, or securities authorised by law as investments for trust funds, with power with such consent, or at such discretion as aforesaid, to vary the said investments into or for others of the same or a like nature: AND shall stand possessed of the said proceeds and the investments thereof upon the same or the like trusts, and with and subject to the same or the like powers and provisions as are hereinbefore declared and contained of and concerning the said premises hereby assigned or such of them as shall be then subsisting and capable of taking effect:

Proviso for indemnity of trustees.

PROVIDED ALSO that while the said premises hereby assigned or any of them shall remain in the possession of the said C. D., the trustees shall not be obliged to see to the preservation thereof, nor be answerable for any loss or injury which may happen thereto: AND IT IS DECLARED that the statutory power of appointing new trustees shall be vested in the said C. D. during her life. IN WITNESS, &c.

(*or*)

Trust for wife for separate use for life and then for husband for life and then for children of wife, as she shall appoint, and in default of appointment, equally.

IN TRUST to permit the said C. D. to use and enjoy the same during her life for her sole and separate use, and after her decease, [IN TRUST to permit the said A. B., if he shall survive her, to use and enjoy the same during his life, and after the death of the survivor of them the said A. B. and C. D.,] IN TRUST for such child or children of the said C. D., and in such manner as the said C. D. shall by deed or will appoint, AND IN DEFAULT of such appointment and so far as any such appointment shall not extend, IN TRUST for all the children of the said C. D. who shall attain the age of twenty-one years to be divided between them fairly and equally as they shall agree, and if they shall be unable to agree then as the trustees shall determine: AND if there shall be no child of the said C. D. who shall attain the age of twenty-one years, IN TRUST for such person or persons as the said C. D. shall by will, notwithstanding her coverture, appoint, and in default of such appointment and so far as any such appointment shall not extend: IN TRUST for the said C. D. absolutely, if she shall survive her now intended coverture: BUT if she shall die during her coverture, IN TRUST for, &c. (*next-of-kin, suprà*, p. 307). PROVIDED ALWAYS that the trustees may at any time with the consent of the said C. D. during her life and after her decease [with the consent of the said A. B., during his life and after the decease of the survivor of the said A. B. and C. D.] at the discretion of the trustees, sell the said premises hereby assigned or any of them, and either apply the net proceeds in purchasing other furniture, chattels, or effects, or invest the same in, &c. (*as in last form*), and shall stand possessed of the proceeds and the furniture, stocks, funds, or securities which shall or may be acquired therewith, UPON the same or the like trusts, and with and subject to the same or the like powers and provisions as are hereinbefore declared and contained of and concerning the premises hereby assigned, or such of them as shall be then subsisting, and capable of taking effect. (*Proviso for indemnity of trustees and appointment of new trustees clause, suprà*, p. 307.)

If no child for appointees by will of wife and in default of appointment for wife or her next of kin.

Power of sale.

No. XXVII.

SETTLEMENT *of* REAL ESTATE, *with usual* PROVISIONS; CONVEYANCE *by the intended* HUSBAND *of lands and hereditaments to the* USE *that* WIFE *may* RECEIVE *a* RENT-CHARGE *as* PIN-MONEY *during joint lives, and subject thereto, to the use of* HUSBAND *for life, with* REMAINDER *to the use that* WIFE *may receive a* JOINTURE RENT-CHARGE *during her life, and then* to TRUSTEES *for one thousand years to raise* PORTIONS *for younger* CHILDREN, *with remainder to the first and other* SONS *of the marriage successively in* TAIL-MALE; *Trusts of the* TERM; POWER *to* HUSBAND *to charge the* ESTATE *with* JOINTURE *and* PORTIONS *in favour of a future* WIFE *and of* CHILDREN *by a future marriage;* POWERS ADDITIONAL *to those conferred by* SETTLED LAND ACT, 1882, *and* OTHER USUAL PROVISIONS.

SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*) (*a*) of the third part, WITNESSETH and DECLARES as follows:—

Parties

1. IN consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said A. B. as settlor hereby conveys unto the said E. F., G. H., and I. K. (hereinafter called the "trustees of these presents"), THE manor, messuages, lands, tenements, and hereditaments, situate in the parishes of —— and ——, in the county of ——, particularly described in the schedule hereunder written: To HOLD the same unto the trustees of these presents in fee simple,

Conveyance by intended husband of parcels.

To use that wife shall receive

(*a*) It was formerly the practice in settlements of real estate to have at least two sets of trustees, viz.:—(1) Trustees of the powers of sale and exchange, and for the general purposes of the settlement, and (2) trustees of the jointure and portions term, and if more than one term was created, separate trustees were frequently appointed for each term. The reason for the practice was founded on the law of merger. Before the Act 8 & 9 Vict. c. 106, it was in most cases necessary and proper to limit freehold estates to trustees, in order to preserve contingent remainders, and if any term of years created by the settlement had been limited to the same trustees, there was a risk of the term merging in the other estate thus created; hence it was considered necessary and proper that the trustees to preserve (who were usually the trustees of the power of sale and exchange) should be different

The old practice was to have several sets of trustees,—one set is now sufficient.

SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

rent-charge for separate use as pin money.

Subject thereto to use of husband for life.

After his death that wife shall take a jointure,

then to trustees for one thousand years.

To THE USE of the said A. B. in fee simple, until the said intended marriage, and from and after the marriage, To THE USE that during the joint lives of the said A. B. and C. D., the said C. D. shall receive a yearly rent-charge of £——, to commence from the day of the said marriage, and to be paid by equal half-yearly payments, the first thereof to be made at the end of six calendar months after the said marriage, the said rent-charge to be for her sole and separate use, and so that she shall not have power to dispose thereof in the way of anticipation: AND subject to the said rent-charge, To THE USE of the said A. B. during his life, without impeachment of waste, with remainder, To THE USE that the said C. D., if she survives the said A. B., shall receive during her life for her jointure a yearly rent-charge of £——, to commence from his death, and to be paid by equal half-yearly payments (*b*), the first thereof to be made at the expiration of six calendar months after his death (*c*): AND subject to the said rent-charge (*d*), To THE USE of the trustees of these presents for the term of one

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from the trustees of the term. And for a similar reason it was considered that if two separate terms were limited to the same trustees, there was a risk of the two terms coming together without the intervention of any other estate, in which case also there would be a merger. But as the limitation to trustees to preserve contingent remainders has now been discontinued, and in a simple settlement the trustees of the power of sale and exchange take no legal estate, and as moreover under the Judicature Act, 36 & 37 Vict. c. 66, s. 25, sub-sect. 4, there is now no legal merger, so long as a beneficial interest subsists in equity, there is now no objection to having the same trustees for the powers and for the terms, if the parties so desire.

(*b*) By the Income Tax Act, 5 & 6 Vict. c. 35, sect. 103, all contracts, covenants, and agreements made and entered into for payment of any interest, rent, or other annual payment in full without allowing a deduction for income-tax are declared to be void. It has been held that this prohibition does not apply to a disposition by will, and accordingly that if by a will an annuity of rent-charge is directed to be paid free from income-tax, the annuitant will be entitled to have the whole amount paid without the tax being deducted. Festing *v.* Taylor, 3 Best & S. 217; 32 L. J. Q. B. 41. But a gift by will of an annuity to be paid without any deduction whatsoever, is not a gift free from income-tax. Abadam *v.* Abadam, 33 L. J. Ch. 593.

(*c*) By the Conveyancing Act, 1881, sect. 44, ample powers of distress and entry for securing rent-charges are conferred, and also a power to demise the land for a term for the same purpose, so that express powers to this effect are now unnecessary.

Charge of £15,000 for portions.

(*d*) Sometimes the settlor wishes to reserve to himself a power of appointment among his children. In such case the following limitation will be inserted between the jointure and the 1000 years term:—

"To THE USE of all or such one or more of the children of the said A. B. by the said C. D., or to the use of such person or persons in trust for all or any one or more of such children for

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Then to first and other sons of marriage in tail male.

Remainder to husband in fee.

thousand years, to commence from the decease of the said A. B., without impeachment of waste, UPON the trusts hereinafter declared concerning the same: AND subject thereto, TO THE USE of the first and other sons of the said A. B. by the said C. D. successively, according to seniority in tail male, with remainder, TO THE USE of the said A. B. in fee simple.

Charge of money for portions of daughters and younger sons.

2. FROM and after the decease of the said A. B., and subject to the said rentcharge of £—— hereinbefore limited to the said C. D. (*dd*), the hereditaments hereby settled shall be charged (*e*)

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such estate, or estates, and in such manner as the said A. B. shall by any deed or deeds, with or without power of revocation and new appointment at any time or times appoint, and in default of and until such appointment, and so far as any such appointment shall not extend."

(*dd*) If a power of appointment among the children has been reserved to the settlor as suggested in the last note, add here, "and subject also to any appointment which may be made by the said A. B. under the power in that behalf hereinbefore contained."

Observations as to the proper form of a trust for raising portions with regard to the time for ascertaining the character of younger son.

(*e*) Where a strict settlement is made by a parent, or person *in loco parentis* and portions are provided for younger children, the general rule (subject, however, to be controlled by the express language of the settlement) is that no child taking the estate by virtue of the settlement, before the portions become *payable*, will be allowed to take any share in the sum provided for portions; and this is so, whether the settlement does or does not contain an express provision to exclude him. Consequently, if an eldest son dies without issue before the time when the portions become distributable, the second son becoming an eldest son, and entitled as such to the settled estates, is excluded from a share in the portions. (Chadwick *v.* Dolman, 2 Vern. 527; Lord Teynham *v.* Webb, 2 Ves. senr. 198; Re Bayley's Settlement, L. R. 6 Ch. 592.) But if the second son is prevented from taking the settled estates by a disentailing deed executed by the eldest son before his death, such second son is not excluded, even though he may take the property under a resettlement. (Spencer *v.* Spencer, 8 Sim. 87; Macoubrey *v.* Jones, 2 K. & J. 684, disapproving of Peacocke *v.* Pares, 2 Keen, 689.)

The rule by which a son being only a second son at the time his portion vests, but afterwards becoming an eldest son, is excluded, is an exception to the ordinary rule that the character of eldest son is to be ascertained at the time of vesting, and the exceptional rule is confined to cases where the provision is made by a parent, or a person *in loco parentis.* (Hall *v.* Hewer, Amb. 203; Adams *v.* Adams, 25 Beav. 652; Sandeman *v.* Mackenzie, 1 J. & H. 613.)

Nor does the rule above referred to apply where the provisions of the settlement clearly show that the shares are to vest in the children at twenty-one, and are to remain so whatever may occur afterwards. (Windham *v.* Graham, 1 Russ. 331.)

Previously to the late case of Ellison *v.* Thomas (1 De G. J. & S. 18) it was generally considered that under the form of a trust for raising portions then in common use, an eldest son was always excluded, even though he died

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Definition of expression "younger sons."

Sum charged to be divisible among children as husband shall appoint;

with the sum of £15,000 (reducible as hereinafter provided) for the portions of the children of the said intended marriage who being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, and for this purpose the expression "younger sons" shall be construed to mean and include every son not being at his birth or becoming during his minority an eldest or only son entitled for the time being under these presents to the hereditaments hereby settled for an estate in tail-male in possession or in remainder immediately expectant on the decease of the said A. B.: And the sum of money charged as aforesaid shall be divided between or among the said children in such shares and manner as the said A. B. shall by any deed or deeds or by his will appoint, and in default of such appointment, and so far as any such appointment shall not extend, shall be divided between or among the said children in equal shares, the portion of each child who attains a vested interest therein after the death of the said A. B. to be payable to him or her upon the vesting thereof, and the portion of each child who attains a vested interest therein in the lifetime of the said A. B. to be

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before coming into possession of the settled estate. (See Gray *v.* Limerick, 2 De G. & Sm. 370.) It seems, however, to be now settled that if an eldest son dies before his estate tail falls into possession without inheritable issue, and without having disentailed, his representatives will under the form above referred to take a portion. (Ellison *v.* Thomas, *ubi suprà*; Davies *v.* Hugenin, 1 H. & M. 730; Sing *v.* Leslie, 3 H. & M. 68.) But it is conceived (though it has not been expressly decided), that this would not be the case if the eldest son so dying leaves a son who ultimately succeeds to the settled estate, nor if he concurs with his father in a disentailing assurance. (See Collingwood *v.* Stanhope, L. R. 4 H. L. 43, where, however, the eldest son survived his father, and would, but for his own disentailing deed, have become entitled in possession under the original settlement.)

The present state of the authorities makes it important that a settlement should express clearly whether the character of younger son is to be ascertained at the time of vesting, or at the time of payment. It is submitted that on the whole the time of vesting is the more convenient, so that a son being an eldest son at twenty-one is excluded in every case, and a son being a younger son at twenty-one does not lose his portion by afterwards becoming the eldest. A second son attaining twenty-one is thus in a position, in case he marries, to make a certain provision for his wife and children, which he could not do if his portion was liable to be defeated by the subsequent death of his elder brother. And if it is urged, as a possible hardship, that the wife and daughters of an eldest son who dies before his father may find themselves unprovided for, the reply is that an eldest son can always, with the concurrence of the father, bar the entail and resettle the estate, and thus make a proper provision for his family, and it may, as a general rule, be presumed that the father will not refuse his concurrence in a resettlement without some good reason.

payable to him or her upon the decease of the said A. B.: PROVIDED ALWAYS that no child taking a share under any appointment shall have any share in the unappointed part (if any) of the said money without bringing his or her appointed share into hotchpot, and accounting for the same accordingly: PROVIDED ALSO that if only one child being a younger son shall attain the age of twenty-one years or being a daughter shall attain that age or marry, such child shall have the sum of £5,000 and no more for his or her portion, and if two children and no more being younger sons shall attain the age of twenty-one years or being daughters shall attain that age or marry, such two children shall have the sum of £8,000 and no more between them for their portions, and if three children and no more being younger sons shall attain the age of twenty-one years or being daughters shall attain that age or marry, such three children shall have the sum of £12,000 and no more between them for their portions, and the excess of the said sum of £15,000 over and above the said sum of £5,000, £8,000, or £12,000 (as the case may be), except such part (if any) of the money constituting the excess as under the power of advancement hereinafter contained, shall have been raised for any son who shall die or cease to be a younger son while under the age of twenty-one years, shall sink into the said hereditaments and cease to be charged thereon (*b*).

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and in default of appointment equally with hotchpot clause.

Reduction of charge to £5000, £8000 or £12,000 if only one, two, or three younger children.

(*b*) Some care is requisite in framing a charge of portions, where, as is generally the case, it is wished to make the amount ultimately raiseable depend on the number who obtain vested interests. The plan formerly in general use was to make the amount charged depend in the first instance on the number of children born, the portion of each child to be a vested interest at twenty-one, or in the case of a daughter at marriage, and a survivorship or accruer clause was added to the effect that if any child died before attaining a vested interest, his or her portion (original and accruing) should go to the others, except so far as any part might have been raised for his advancement, and with a proviso intended to prevent any child from having his or her portion increased by survivorship beyond the limit prescribed. This form was well understood and answered its purpose, but was somewhat cumbersome. In the later editions of Davidson's Precedents (vol. iii.) the plan is adopted of making the amount raiseable depend on the number of children who attain twenty-one, or being daughters marry, with a proviso attached to the advancement clause for the purpose of preventing the whole machinery from being thrown out of gear by reason of a son dying during minority after having received part of his presumptive portion by way of advancement. In the above Precedent the authors have adopted the plan, which appears to them equally effective and convenient, of charging the property in the first place with the *maximum*, subject to a proviso reducing the amount within the limits intended in the event of the number of children not being sufficient to require the *maximum*.

Plan adopted for making the amount vary according to the number of children.

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Trusts of term to raise portions;

and to raise interest on unpaid portions;

and to raise annual sums for maintenance of infant younger children;

and subject as above to permit rents to be received by person entitled in remainder.

3. The said hereditaments are hereinbefore limited to the trustees of these presents for the said term of one thousand years, Upon trust that the said trustees shall by mortgage of the hereditaments comprised in the said term or any of them for the whole or any part of the said term, or by or out of the rents and profits thereof, or by any other reasonable ways or means, raise the sum or sums of money to which any child or children shall become entitled for his, her, or their portion or portions under the foregoing charge, as and when the same respectively shall become payable, together with the costs and expenses incurred in or about the execution of this trust: And upon further trust that so long as any portion which shall have become payable under the foregoing charge shall remain unpaid, the said trustees shall out of the rents and profits of the said hereditaments, or by any other reasonable ways or means, raise and pay to the person entitled to such unpaid portion interest thereon after the rate of £4 per cent. per annum by half-yearly payments, and so that if such person shall be a married woman under the age of twenty-one years, her receipt shall be a sufficient discharge for such interest, notwithstanding her infancy: And upon further trust that if at the decease of the said A. B. any child entitled in expectancy to a portion under the foregoing charge shall be under the age of twenty-one years, and being a daughter shall be unmarried, the said trustees shall, with and out of the rents and profits of the said hereditaments or by any other reasonable ways and means raise such annual sum for the maintenance and education of each such minor as the said trustees shall think fit, not exceeding what the interest of the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and shall apply the annual sum to be so raised for the maintenance and education of such minor accordingly, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof, And upon further trust that, subject to the foregoing trusts and to the power of advancement next hereinafter contained, the said trustees shall permit the rents and profits of the hereditaments to be received by the person or persons for the time being entitled thereto in remainder immediately expectant on the said term.

Trustees to raise

4. It shall be lawful for the trustees of these presents, upon

the request in writing of the said A. B. during his life, and after his death, at their own discretion, by all or any of the ways and means aforesaid to raise any part or parts not exceeding together one moiety of the presumptive portion of any son being a minor in the sum of money hereby charged for portions as aforesaid, and to apply the same for the advancement, preferment, or benefit of such son in such manner as the said A. B. shall request, or as the said trustees shall after the death of the said A. B. think fit, and the money so raised shall be reckoned as part of the share of such son if he shall attain the age of twenty-one years.

moiety of presumptive shares of sons for advancement.

5. If the said A. B. shall marry again it shall be lawful for him at any time or times, either before or after each or any such future marriage (but subject to the said term of one thousand years hereinbefore limited and the trusts thereof), by any deed or deeds, or by his will to appoint to each or any such future wife in case she shall survive him, during her life, for her jointure, any yearly rent-charge not exceeding the yearly sum of £——, to be charged upon and issuing out of the hereditaments hereby settled, or any part thereof, and to be paid at such times and in such manner as the said A. B. shall think fit: And also, by any deed or deeds, or by his will, to charge the said hereditaments, or any part thereof, with any sum of money for the portion or portions of his child or children by such future wife or wives as aforesaid, not exceeding for one child the sum of £5,000, for two children the sum of £8,000, for three children the sum of £12,000, and for four or more children the sum of £15,000, to go to or be divided between or among such child or children, in such shares and manner as the said A. B. shall think fit, but so that (subject to any such power of advancement as is hereinafter mentioned) no portion shall be made to vest absolutely in any child being a son unless he shall attain the age of twenty-one years, or being a daughter she shall attain that age or marry under that age: And also, by the same or any other deed, or by his will, to limit and appoint the said hereditaments, or any part thereof, to trustees for any term of years with or without impeachment of waste (such term to take effect in order of limitation immediately after the term of one thousand years hereby created): Upon such trusts as he the said A. B. shall think fit, for raising the money to be charged for a

Power to husband to jointure a future wife.

And to charge with portions for children of a future marriage.

To limit term to trustees to raise portions.

Power to husband to authorise trustees to raise annual sum for maintenance of minors.

And to raise one-half of presumptive portions of sons for advancement.

portion or portions as aforesaid, together with the costs and expenses of and incidental to the execution of such trusts: And the said A. B. may in and by such appointment direct or authorize the trustees of the term to be thereby created during the minority of any child entitled in expectancy to a portion under such charge as aforesaid to raise out of the rents and profits of the said hereditaments or otherwise such annual sum as the said A. B. shall direct, or as the said trustees shall think fit, not exceeding interest on the expectant portion of such minor after the rate of £4 per cent. per annum, and to apply the same for his or her maintenance and education, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: And the said A. B. may also, if he thinks fit, authorize the said trustees to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son, and to apply the same for his advancement, or benefit. Provided always that if any money shall become raiseable for the younger child or children of the now intended marriage under the foregoing charge in that behalf, the amount raiseable for the child or children of the said A. B. by any future wife or wives under any charge to be made pursuant to this present article shall not exceed such a sum as with the amount raiseable for the child or children of the now intended marriage as aforesaid shall make up the sum of £25,000: And any charge made under this present article which would give to the child or children of the said A. B. by any such future wife or wives a greater amount than as last aforesaid shall fail of effect as to the excess.

Trustees to take possession during any infancy.

6. The trustees of these presents shall be the trustees hereof for the purposes of the Settled Land Act 1882, (*a*), and also for the purposes mentioned in sect. 42 of the Conveyancing and Law of Property Act, 1881 (*aa*), and if any person, during whose

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Power should not be given to a single trustee to act.

(*a*) The surviving or continuing trustees, so long as there are two, will be able to exercise all the powers and duties of the Act. It is not desirable to insert any express provision, as authorised by sect. 39, enabling a single trustee to receive capital trust money. Whenever the trustees are reduced to one there will be no difficulty in appointing another or others under the Conveyancing Act, 1881, sect. 31.

Power to trustees during infancy of any beneficiary

(*aa*) Section 42 is as follows :—

(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the

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infancy the said trustees shall be in possession of the hereditaments hereby settled under that section, shall die while an

to take possession,

settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

and manage settled property;

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

while in possession to pay expenses of management and keep down annual charges,

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

to apply money for maintenance of infant at discretion and accumulate surplus.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

Destination of accumulations.

(i.) If the infant attains the age of twenty-one years, then in trust for the infant;

(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but

(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trust are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

infant being tenant in tail by purchase, the accumulated fund arising as in the said section mentioned shall be held by the said trustees upon the trusts, which would be applicable thereto if the same were capital money arising from a sale of part of the hereditaments hereby settled under the Settled Land Act, 1882.

Power to give sites for churches, &c.

7. It shall be lawful for the said A. B. during his life from time to time to convey any land hereby settled (not exceeding in any one parish —— acres) by way of gift or by way of sale for a price less than the full value thereof, to any person or persons or body corporate in fee simple as and for the site of a church, school, hospital, or almshouse, or as and for a yard, garden, or ground to be annexed thereto, or for a burying ground, or for any other religious or charitable purpose: and any conveyance made under this power shall take effect as provided by section 20 of the Settled Land Act, 1882, in like manner as if the same had been made upon a sale under the powers of that Act.

Power to convey for building purposes for fee farm rents.

[8. It shall be lawful (*b*) for the said A. B. during his life, and after his decease for the trustees of these presents during the minority of any son of the now intended marriage who if of full age would for the time being be entitled to the possession or the receipt of the rents and profits of the hereditaments hereby settled as tenant in tail by purchase, and without obtaining an order of the Court for that purpose from time to time, to convey any part of the said hereditaments (either with or without any easements, rights or privileges to be exercised or enjoyed in, over, upon, or under any lands not included in such conveyance) to any person or persons for building or repairing purposes in fee simple or for any less estate in consideration of a yearly rent-charge to be reserved and made payable out of the hereditaments to be so conveyed and to be also secured by covenant or

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but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

Section applies where infant has undivided share.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

Power to grant in fee farm, sometimes required.

(*b*) In some parts of the country it is customary, instead of granting building leases, to make grants in fee simple at fee farm rents; where this custom prevails, the form given above will be found useful. If it is omitted, the sanction of the Court would have to be obtained under section 10 of the Settled Land Act, 1882.

otherwise as the person or persons exercising this power shall think fit: and any conveyance under this power shall be made and take effect as provided by section 20 of the Settled Land Act, 1882, in like manner as if the same had been made upon a sale under the powers of that Act.]

Power to raise money by mortgage for improvements.

[9. It shall be lawful (*c*) for the said A. B. during his life and after his death for the trustees of these presents during the minority of any son of the now intended marriage who if of full age, would, for the time being be entitled to the possession or receipt of the rents and profits of the hereditaments hereby settled as tenant in tail by purchase to raise any money for improvements authorised by the Settled Land Act, 1882, by a mortgage of the said hereditaments or any part thereof, and any money so raised shall be received by the said trustees for the purpose aforesaid, and all the provisions of the said Act shall take effect with respect to the money to be raised as aforesaid, and any mortgage to be made for that purpose as if the words "or for improvements authorised by this Act" had been inserted in section 18 after the word "partition."]

Variations of sections 26 and 28 of Settled Land Act, so as to dispense with interference of Land Commissioners.

[10. Sections 26 and 28 of the Settled Land Act, 1882 (*d*), shall, with reference to these presents and the hereditaments hereby settled, be varied as follows:—(1.) The trustees may apply capital money arising under the said Act or any money raised for improvements under the last preceding Article in or towards payment of the whole or any part of the work or operation comprised in the improvement, upon the certificate of a competent engineer or able practical surveyor nominated by the trustees of these presents without its being necessary that he shall be also approved by the Land Commissioners or by the Court: AND (2.) section 28 shall be read and take effect as if the words "or the trustees of these presents" had been inserted therein throughout after the word "Commissioners."]

Sales, &c. may be made by tenant for life under statutory power without giving notice to the trustees.

11. It shall not be necessary for the said A. B. when intending to make a [sale, exchange, partition,] lease [mortgage or charge (*e*)] under the powers contained in the Settled Land Act, 1882, to

(*c*) The Settled Land Act, 1882, authorises any capital money in the hands of the trustees or in Court to be expended in improvements, but does not enable money to be raised for that purpose. The power in the text will in some cases be found useful.

(*d*) In order to avoid expense and delay, it will sometimes be desired to dispense with the necessity for having resort to the Land Commissioners in regard to improvements. This clause is intended for this purpose.

(*e*) The words in brackets will be omitted, if it is desired to negative sect. 45 as to leases only.

give any notice of his intention in that behalf to the trustees of these presents or any of them, or to their solicitor as required by section 45 of that Act.

Fines on leases to be deemed capital, and on mining leases no part of rent to be capital.

12. Any fine taken upon a lease made under the powers of the Settled Land Act, 1882 (not being a lease for giving effect to a covenant for renewal, performance whereof could be enforced against the owner for the time being of the land comprised in the lease), shall be deemed capital money arising from the hereditaments hereby settled under the said Act: But under a mining lease made under the powers of the said Act, no part of the rent thereby reserved shall be set aside as capital as required by section 11, but the whole thereof shall go as rents and profits, as if that section had been omitted from the said Act (*f*).

Mansion house may be sold or leased, without consent of trustees.

13. The principal mansion house on the land hereby settled, and the demesnes thereof, and the other lands usually held therewith, may be sold or leased by the said A. B. without the consent of the trustees of these presents or an order of the Court (*g*).

Investment clause.

14. [Capital money (*h*) arising from the hereditaments hereby settled under the Settled Land Act, 1882, and money liable under these presents to be applied as if it had been capital money arising as aforesaid, may be invested in or upon, &c. (*as in Precedent No. XI., Article* 7, *supra, p.* 257)].

Power of appointing new trustees.

15. The power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall for the purposes of these presents be vested in the said A. B. during his life.

Settlement to be void if marriage not solemnized within twelve months.

16. Provided always, that if the said intended marriage shall not be solemnized within twelve calendar months from the date of these presents, then and in such case these presents, and the uses, trusts, powers, and provisions hereinbefore declared and contained, shall be void and of no effect, and the hereditaments hereby settled shall revert and go to the use of the said A. B., in fee simple.

In witness, &c.

(*f*) The above provision as to mining rents can be omitted, if it is wished to leave section 11 in force, or if the settlement does not comprise mineral property.

(*g*) It will generally be convenient to negative sect. 15 of the Settled Land Act, in order to obviate questions as to what is included in it.

(*h*) Where it is wished to give a more extensive power of investment than that contained in the Act, the above clause may be inserted.

XXVIII.

RE-SETTLEMENT *of* REAL ESTATE *by a* FATHER *and* ELDEST SON. LIMITATIONS *to such* USES *as* FATHER *and* SON *shall* JOINTLY *appoint, and subject thereto to* USES *to secure a* RENT CHARGE *to* SON *during joint lives of himself and father, Subject thereto to* FATHER *for* LIFE, *remainder to* SON *for life, remainder to* FIRST AND OTHER SONS *of* SON *successively in* TAIL MALE; *remainder to* SUCH USES *as* FATHER *and his* SECOND SON *shall jointly* APPOINT, *and subject thereto to* FIRST AND OTHER SONS *of* SECOND SON *successively in* TAIL MALE, *with similar* LIMITATIONS *in favour of other* SONS *of* FATHER *and their* ISSUE MALE, *with remainder to* AFTER BORN *sons of* FATHER *successively in tail male with ultimate remainder to son in fee simple.* POWER *to* FATHER *to charge with* GROSS SUM *for his own benefit—similar* POWER *to* ELDEST SON *when in possession.* POWERS *to* ELDEST SON AND THE SUBSEQUENT TENANTS *for* LIFE, *to* JOINTURE *and charge with* PORTIONS. ADDITIONAL POWERS. PROVISO *keeping on foot* POWERS *of* LEASING, *&c., in* FORMER SETTLEMENT (*a*).

RE-SETTLEMENT BY FATHER AND ELDEST SON.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN W. B., of, &c. (*father*), of the first part, A. B., of, &c. (*eldest son*), of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS by an indenture, &c. (*date and parties*), divers freehold hereditaments therein described were settled and assured (after certain uses which have since determined or failed to take effect) to the use of the said W. B. during his life without impeachment of waste, with remainder to the use that X. B. his then intended wife, if she should survive the said W. B., should during her life receive a yearly

Recital of existing settlement.

(*a*) It is usual on an eldest son coming of age to resettle the family estate. If the re-settlement is postponed until the son's marriage, it will generally be found convenient to frame the re-settlement without any express reference to the intended marriage, and to have a separate deed of settlement on the marriage in exercise of powers of jointuring and charging with portions inserted in the re-settlement.

RE-SETTLEMENT BY FATHER AND ELDEST SON.

rent-charge of £500 for her jointure, and subject thereto to the use of (*trustees*), for the term of 500 years, upon trusts for [better securing the said rent-charge and also for] raising (in the event which happened) the sum of £10,000 for the portions of the younger children of the said W. B. by the said X. B. his wife, and subject thereto to the use of the first and other sons of the said W. B. successively according to seniority in tail male with divers remainders over: AND in the said indenture are contained the usual powers of leasing and of sale and exchange and a direction that the moneys to arise from any such sale shall be laid out in the purchase of other hereditaments to be settled to the like uses, and shall in the meantime be invested in or upon such stocks, funds, or securities as therein mentioned: AND ALSO powers enabling the said W. B. to jointure a future wife and to charge the settled hereditaments with portions for his children by a future wife: AND by the said indenture now in recital divers copyhold hereditaments held of the manor of —— in the county of —— therein described were covenanted to be surrendered to the use of —— (*the trustees of the settlement*) and their heirs upon trusts corresponding with the uses thereinbefore declared of the said freehold hereditaments: AND WHEREAS the said copyhold hereditaments were on the —— day of —— duly surrendered to the use of the said (*trustees*) and their heirs pursuant to the covenant in that behalf contained in the said indenture, and the said (*trustees*) were thereupon admitted tenants to the said hereditaments: AND WHEREAS some of the freehold and copyhold hereditaments comprised in the said recited indenture of settlement have been from time to time disposed of by way of sale or exchange under the powers in that behalf contained in the said indenture, and part of the proceeds of such sales have been laid out in the purchase of other freehold and copyhold hereditaments which freehold hereditaments have been conveyed to the uses of the said indenture of settlement, and which copyhold hereditaments have been surrendered to the use of the said —— (*trustees*) upon the trusts of the said indenture and who have been admitted thereto accordingly, and the residue of such proceeds is now represented by the sum of £—— consolidated £3 per cent. annuities standing in the names of the said —— and a sum of £—— secured on mortgage of real estate situate at —— which mortgage was effected by an

Sales and exchanges under power in existing settlement

RE-SETTLEMENT BY FATHER AND ELDEST SON.

indenture, &c. (*date* and *parties*): AND WHEREAS the particulars of the hereditaments now subject or believed to be subject to the uses of the said indenture of settlement are set forth in the first schedule hereunder written: AND WHEREAS the said A. B. is the first son of the said W. B. by the said X. B. his wife, and he attained the age of twenty-one years on the —— day of —— last: AND WHEREAS by an indenture bearing even date with these presents, and made between the said W. B. of the first part, the said A. B. of the second part, and X. Y. of the third part (and which indenture is intended to be enrolled in the High Court of Justice (Chancery Division) as a disentailing assurance) the said W. B. and A. B. have conveyed all the freehold hereditaments comprised in and settled by the hereinbefore recited indenture of settlement, except such of them as have been disposed of by way of sale or exchange as aforesaid: And also (by way of conveyance and not of exception) all the freehold hereditaments which were purchased or received in exchange and have been conveyed to the uses of the said indenture of settlement as aforesaid: AND ALL other (if any) the freehold hereditaments now subject, either at law or in equity, to the uses of the said indenture of settlement unto the said X. Y. in fee simple (subject to the said yearly rent-charge of £500 limited to the said —— (*wife*) by the said indenture of settlement and also to the said term of 500 years and the trusts thereof, but freed and discharged from the estate tail of the said A. B., and all remainders estates and powers to take effect after the determination or in defeasance thereof): To such uses, upon such trusts, and with and subject to such powers and provisions as the said W. B. and A. B. shall by any deed or deeds jointly appoint: AND by the same indenture the said sum of £—— consolidated £3 per cent. annuities and the sum of £—— secured by mortgage as aforesaid, and all other moneys, stocks, funds, and securities (if any), liable to be laid out in the purchase of hereditaments to be settled as aforesaid have been assigned by the said W. B. and A. B. (freed and discharged as aforesaid) unto the said X. Y. upon such trusts, and subject to such powers and provisions as the said W. B. and A. B. shall by any deed or deeds jointly appoint: AND WHEREAS by another indenture bearing even date with these presents and made between, &c. (*parties*), (and which indenture is entered on the Court

That A. B. is eldest son.

Disentailing deed of freeholds and money.

Disentailing deed of copyholds.

Agreement for settlement.

rolls of the Manor of ——) the said W. B. and A. B. have conveyed all the copyhold hereditaments held of the said Manor of or to which the said A. B. is equitable tenant in tail unto the said X. Y. in customary fee simple upon such trusts and with and subject to such powers and provisions as the said W. B. and A. B. shall by any deed or deeds jointly appoint: AND WHEREAS the said W. B. is seised in fee simple of the hereditaments comprised in the second schedule hereunder written: AND WHEREAS it has been agreed between the said W. B. and A. B. as a family arrangement that such settlement shall be made as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH AND DECLARES as follows:

Appointment by father and intended husband of hereditaments in first schedule.

(Subject to charges under existing settlement.)

1. THE said W. B. and A. B., as settlors, in exercise of the power for this purpose given to them by the firstly hereinbefore recited indenture bearing even date herewith, and of all other powers (if any) them hereunto enabling, hereby appoint that ALL the freehold hereditaments described in the first schedule to these presents, and all other (if any) the freehold hereditaments comprised in the firstly hereinbefore recited indenture bearing even date with these presents shall (subject to the said yearly rent-charge of £500 by the said indenture of settlement limited to the said —— as aforesaid, and to the said term of 500 years created by the same indenture and the trusts thereof) GO, REMAIN, AND BE to the uses and with and subject to the powers and provisions hereinafter expressed and contained of and concerning the same.

Conveyance by father of hereditaments in second schedule.

2. THE said W. B., as settlor, hereby conveys unto the said E. F., G. H., I. K. (hereinafter called "the trustees of these presents"), THE hereditaments described in the second schedule hereunder written: To HOLD the same unto the trustees of these presents in fee simple, TO the uses and with and subject to the powers and provisions hereinafter declared and contained of and concerning the same.

To such uses as father and son shall jointly appoint, and subject thereto, that son may take rent-charge.

3. THE appointment and conveyance hereinbefore respectively made shall enure and be as regards all the said hereditaments (hereinafter called "the hereditaments hereby settled"): To such uses as the said W. B. and A. B. shall by any deed or deeds jointly appoint, AND in default of such appointment and so far as such appointment shall not extend, TO THE USE that the said W. B. shall during the joint lives of himself and the said A. B. receive a yearly rent-charge of £—— to commence from the date

of these presents, and to be paid by equal half-yearly payments, the first payment thereof to be made on the —— day of —— next: AND subject thereto TO THE USE of the said W. B. during his life without impeachment of waste in restoration of his former life estate under the said indenture of settlement, and so that the powers of jointuring a future wife and of charging with portions for his children by a future wife given to him by the said indenture of settlement shall be also restored and remain in full force: with remainder, TO THE USE of the said A. B. for his life without impeachment of waste with remainder, TO THE USE of the first and other sons of the said A. B. successively according to seniority in tail male, with remainder, TO SUCH USES as the said W. B. and C. B. (the second son of the said W. B.) shall by any deed or deeds jointly appoint, and in default of and until such appointment, and so far as any such appointment shall not extend, TO THE USE of the said C. B. during his life without impeachment of waste, with remainder, TO THE USE of the first and other sons of the said C. B. successively according to seniority in tail male, with remainder, To such uses as the said W. B. and D. B. (the third son of the said W. B.) shall by any deed or deeds jointly appoint, (*with remainders to D. B. for life and his sons successively in tail male with similar remainders to each son already born of W. B. and to his first and other sons successively in tail male*): with remainder, TO THE USE of each and every son of the said W. B. hereafter to be born successively according to seniority in tail male, with remainder, TO THE USE of the said A. B., in fee simple.

Remainder to father for life.

Remainder to eldest son for life, remainder to his first and other sons in tail male, remainder to such uses as father and second son shall jointly appoint, and subject thereto, to second son for life, remainder to his first and other sons in tail male, remainder as father and third son shall jointly appoint, &c. to eldest son in fee simple.

4. IT shall be lawful for the said W. B. at any time or times hereafter by any deed or deeds or by his will to charge the hereditaments hereby settled or any part thereof with the payment to himself or to any other person or persons of any sum of money not exceeding £—— and to appoint the said hereditaments to any person or persons for any term or terms of years, either by way of mortgage for securing payment of the sum of money to be so charged with interest thereon at any rate not exceeding £4 per cent. per annum, or upon trusts for raising the same by mortgage or otherwise.

Power to father to charge with gross sum for himsel

5. IT shall be lawful for the said A. B. if he shall survive the said W. B. at any time or times thereafter by any deed, &c. (*power to charge the settled hereditaments with a gross sum of money as in last article*).

Power for eldest son after coming into possession to charge with gross sum for himself

RE-SETTLEMENT BY FATHER AND ELDEST SON.

Power to eldest son to jointure and charge with portions.

6. It shall be lawful for the said A. B. if he shall marry and either before or after each or any such marriage by any deed or deeds, or by his will to appoint to his wife in case she shall survive him during her life, for her jointure, a yearly rent-charge issuing out of the hereditaments hereby settled or any part thereof not exceeding if and while the said W. B. shall be living, the yearly sum of £——, and after the death of the said W. B. the yearly sum of £——, and to be paid at such times and in such manner as the said A. B. shall direct: And also by any deed or deeds, or by his will, to charge the said hereditaments or any part thereof with a sum of money for the portions of his children being daughters or younger sons not exceeding for one child £——, for two children £——, for three children £——, and for four or more children £——, to vest in and be paid to such child or children at such age or time ages or times not being earlier as to any son than his age of twenty-one years (except by way of advancement under any power to be conferred in that behalf as hereinafter is mentioned) nor as to any daughter than her age of twenty-one years or day of marriage, in such shares if more than one and in such manner as the said A. B. shall direct or appoint.

Power to other sons to jointure,

7. It shall be lawful for every son of the said W. B. (other than the said A. B.) either before or after he shall become entitled under these presents to the possession or receipt of the rents and profits of the hereditaments hereby settled, and either before or after his marriage, by any deed or deeds, or by his will, (but subject and without prejudice to the uses and estates (if any) preceding the use or estate hereby limited to the person making such appointment and to the powers annexed to such preceding uses and estates, and also subject and without prejudice to the uses or estates (if any) which shall or may be limited in exercise of the same powers or any of them) to appoint to any wife of the person for the time being exercising this power for her life, any yearly rent-charge not exceeding the yearly sum of £—— for her jointure, to be issuing out of the said hereditaments or any part thereof, and to be paid at such times and in such manner as the person for the time being exercising this power shall think fit: And also by any deed or deeds, or by his will (but subject and without prejudice as aforesaid) to charge the said hereditaments or any part thereof with any sum of money for the portions of his children being daughters or younger sons,

and to charge with portions for younger children.

Proviso that no portion shall be a lien until the determination of estates preceding the estate of the appointor.

Proviso limiting total amount of jointures charged at one time.

Proviso limiting total amount of portions.

not exceeding for one child £——, for two children between them £——, for three children between them £——, or for four or more children between them £——, to vest in and be paid to such child or children at such age or time ages or times not being earlier as to any son than his age of twenty-one years, except by way of advancement under any power to be conferred for that purpose as hereinafter is mentioned, nor as to any daughter than her age of twenty-one years or day of marriage, in such shares if more than one, and in such manner as the person for the time being exercising this power shall direct or appoint: PROVIDED ALWAYS, that if any person shall exercise the power of jointuring or charging with portions conferred by this article before he shall become entitled to the possession or receipt of the rents and profits of the said hereditaments, then and in every such case the rent-charge or sum of money charged for portions under such exercise of the same power shall not be a lien or charge upon the hereditaments expressed to be charged therewith, nor become payable, nor carry interest unless and until the person by whom the same shall have been charged or some issue of his shall or if of full age would have become entitled under these presents to such possession or receipt as aforesaid: PROVIDED ALSO that the said hereditaments shall not under the powers of jointuring conferred by this Article and by Article 6 be subject or liable at one and the same time to the payment of rent-charges exceeding together the yearly sum of £——, so that if but for this proviso the said hereditaments would have been charged with a greater yearly sum than £—— the payment of the yearly rent occasioning such excess or such part thereof as shall occasion the same shall during the time of such excess be suspended, and for this purpose rent-charges by way of jointure shall have precedence according to the priority in order of limitation of the estates of the persons by whom the same shall have been created: PROVIDED ALSO that the said hereditaments shall not under the powers of charging with portions conferred by this Article and by Article 6 be made subject or liable to the payment of any sum or sums of money exceeding in the whole the principal sum of £——, and moneys to be charged for portions as aforesaid shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power.

Power to same

8. IF the said A. B. or any subsequent tenant for life shall exercise the power of charging with portions hereinbefore con-

RE-SETTLEMENT BY FATHER AND ELDEST SON.

tenants for life to limit terms for raising portions.

ferred on him, it shall be lawful for him by the same or any other deed or by his will to limit and appoint the hereditaments charged with portions as aforesaid to trustees for any term or terms of years without impeachment of waste, UPON SUCH TRUSTS for raising the money charged for portions, together with the costs and expenses of and incidental to the execution of such trusts as the person for the time being exercising this power shall think fit: AND the person exercising this power may, in and by such appointment, direct or authorise the trustees of the term to be thereby created during the minority of any child who, if of full age, would be entitled in possession to a portion under such appointment to raise out of the rents and profits of the hereditaments comprised in the same term or otherwise, such annual sum as the person exercising this power shall direct, or as the said trustees shall think fit, not exceeding what interest on the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and to apply the same for the maintenance and education of such minor, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: AND the person for the time being exercising this power may also, if he thinks fit, by any such appointment as aforesaid, authorise the said trustees to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son under such appointment, and to apply the same for the advancement, preferment, or benefit of such son.

and annual sums for maintenance;

and to confer power of advancement.

9. THE term "younger sons" hereinbefore used with reference to the powers of charging with portions shall be construed to mean and include every son of the person for the time being exercising the said power not being at his birth or becoming during his minority an eldest or only son entitled to the hereditaments hereby settled for an estate in tail male in possession, or in remainder immediately expectant on the life estate of his father, or on some estate prior in order of limitation to such life estate; and also (if the person exercising the said power shall so declare by deed or will but not otherwise), any son who being an eldest or only son entitled in remainder as aforesaid when he attains the age of twenty-one years shall afterwards die before his estate tail falls into possession, without having dis-

Definition of term "younger sons."

RE-SETTLEMENT BY FATHER AND ELDEST SON.

entailed the said hereditaments or any part thereof with the consent of the protector of the settlement (*a*).

10. (*The same as Article* 6 *of last Precedent, suprà*, p. 316.)

Power to tenants for life, &c., to give sites for churches &c.

11. It shall be lawful for every person hereby made tenant for life of the hereditaments hereby settled as and when by virtue of these presents he shall be entitled to the possession or to the receipt of the rents and profits of the said hereditaments, from time to time to convey, &c. (*Power to give sites for churches, &c., suprà*, p. 318).

Power to convey for building purposes fee farm rents.

[12. It shall be lawful for the person for the time being entitled under these presents to the possession or receipt of the rents and profits of the hereditaments hereby settled as tenant for life if such person shall be of full age, and for the trustees of these presents during the minority of any person for the time being entitled under these presents to such possession or receipt as tenant for life or tenant in tail by purchase, and without obtaining an order of the Court for that purpose, from time to time to convey, &c. (*Power to convey for building purposes for fee farm rents, as in last Precedent, Article* 8, p. 318)].

[13. It shall be lawful for the person, &c. (*as in last Article down to* "purchase") to raise any money, &c. (*to raise money for improvements, as in Article* 9 *of last Precedent, suprà*, p. 319).]

[14. (*Same as Article* 10 *of last Precedent, suprà*, p. 319).]

15. It shall not be necessary for any tenant for life under these presents, when intending, &c. (*sales, &c. may be made under statutory power without giving notice to trustees, suprà*, p. 319.)

16, 17, 18. (*Same as Articles* 12, 13, *and* 14 *of last Precedent, substituting in Article* 13 "any tenant for life under these presents" *for* "the said A. B."

(*a*) See p. 311, *suprà*, note. In that note it is submitted that it is right to exclude from a portion the representatives of an eldest or only son, who dies before his estate tail falls into possession, on the ground that such son when he attains twenty-one may, with the concurrence of his father, bar the entail, and provide for his family, and that it is not to be presumed that the father will refuse such concurrence without sufficient reason. But this argument is not conclusive when applied to a set of limitations such as those in the above precedent. The tenant for life for the time being may happen to be the uncle, and not the father, of the first tenant in tail, and in such a case it is not impossible that he may withhold his consent to a re-settlement of the estates on his nephew coming of age, and thus deprive the latter of the opportunity of making a provision for his wife and younger children. To meet this possibility the appointor is enabled, if he thinks fit, to let in an eldest son dying before his estate tail falls into possession, and without having disentailed.

RE-SETTLEMENT BY FATHER AND ELDEST SON.

Appointment of copyholds upon trusts corresponding with uses of freeholds.

19. The said W. B. or A. B. as settlors in exercise of the powers for this purpose given to them by the secondly hereinbefore recited indenture bearing even date with these presents, and of all other powers (if any) him hereunto enabling, hereby appoint that such of the hereditaments described in the first schedule to these presents as are of copyhold tenure, And all other (if any) the copyhold hereditaments comprised in the secondly hereinbefore recited indenture of even date herewith shall (subject to the charges now subsisting in and affecting the same under the hereinbefore recited indenture of settlement) henceforth go remain and be held upon such trusts and with and subject to such powers and provisions as will correspond as nearly as the difference of tenure will permit, with the uses powers and provisions hereinbefore declared and contained of and concerning the freehold hereditaments hereby settled but so as not to increase or multiply charges or powers of charging.

Appointment of consols and money secured on mortgage representing part of the settled estate upon same trusts as proceeds of sale of real estate.

20. The said W. B. and A. B. as settlors in exercise of the powers for this purpose given to them by the firstly hereinbefore recited indenture bearing even date herewith and of all other powers (if any) therein hereunto enabling hereby appoint that the said sum of £—— consolidated £3 per cent. annuities, and the said sum of £——, secured by mortgage as aforesaid, shall (subject to the charges now subsisting in and affecting the same under the said indenture of settlement) henceforth go to and be vested in the trustees of these presents to be by them held upon the trusts which would be applicable thereto if the same were capital money or investments representing capital money arising from the sale of part of the hereditaments hereby settled under the Settled Land Act, 1882.

Appointment of new trustees.

21. The power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall, for the purposes of these presents, be vested in the said W. B. and A. B. during their joint lives, and in the survivor of them during his life.

Power of leasing and sale and exchange contained in existing settlements to remain in force.

22. The powers of leasing and sale and exchange and for the appointment of new trustees contained in the hereinbefore recited indenture of settlement of the —— day of ——, shall remain in full force during the life of the said W. B., and may be exercised so as to override the uses, powers, and provisions limited and declared by and in these presents, and any hereditaments purchased or received in exchange under any exercise of

such powers shall be settled to the uses which shall be then subsisting in the hereditaments hereby settled under the joint operation of the said indenture of settlement and these presents.

RE-SETTLEMENT BY FATHER AND ELDEST SON.

In witness, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. XXIX.

CONVEYANCE *by intended* HUSBAND *of* FREEHOLD LAND, *to secure a* JOINTURE *to intended* WIFE, *and portions for his* CHILDREN; PROVISO *enabling the* SETTLOR *to* SUBSTITUTE *other* LANDS *as a security for Jointure and portions.*

CONVEYANCE TO SECURE JOINTURE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., and G. H., of, &c. (*trustees*), of the third part: WITNESSETH that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said A. B., as settlor, hereby conveys unto the said E. F. and G. H. (hereinafter called "the trustees of these presents") (*Parcels*): To HOLD the same unto the trustees of these presents in fee simple, To THE USE of the said A. B. during his life, without impeachment of waste, with remainder, To THE USE that, &c., (*use that C. D. shall take thereout a jointure, suprà*, p. 310): AND subject to the said rent-charge, To THE USE of the trustees of these presents for the term of five hundred years, computed from the day of the decease of the said A. B., without impeachment of waste, UPON THE TRUSTS hereinafter declared concerning the same, AND subject thereto, To THE USE of the said A. B. in fee simple: AND IT IS AGREED AND DECLARED that the said premises are hereinbefore limited to the trustees of these presents for the said term of 500 years, UPON TRUST, that if there shall be any

Parties.

Recite that marriage is intended.

Husband conveys freeholds.

To use of husband for life;

and after his decease to the use that wife shall take jointure

and subject thereto to use of trustees for term.

With remainder to the use of husband in fee.

Trusts of term to

raise portions for children varying in amount according to their number.

child or children of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the said trustees shall by mortgage of the said premises or part thereof for all or any part of the said term, or by or out of the rents or profits of the said premises raise for the portion or portions of such child or children the sum of money next hereinafter mentioned (that is to say) If there shall be one such child, the sum of £5000; if there shall be two such children and no more, the sum of £8000; and if there shall be three or more such children, the sum of £10,000, which sum of £8000 or £10,000, as the case may be, shall be divided between or among such children in such shares and manner as the said A. B. shall by any deed or deeds, or by his will appoint, and in default of such appointment and so far as any such appointment shall not extend, shall be divided between them in equal shares, but so that no child taking a share under any appointment shall take any share in the unappointed part (if any) of the said money without bringing his or her appointed share into hotchpot, and accounting for the same accordingly: And upon further trust, &c., (*Trust to raise interest on unpaid portions, and to raise annual sums for maintenance of infant children, suprà*, p. 314). Provided always and it is declared that it shall be lawful for the trustees of these presents, upon the request in writing of the said A. B. during his life, and after his death, at the discretion of the said trustees, by all or any of the ways and means aforesaid to raise any part or parts not exceeding together one moiety of the presumptive portion of any son in the sum of money hereby directed to be raised for portions, and to apply the same for the advancement, preferment, or benefit of such son in such manner as the said A. B. shall request, or as the said trustees shall after the death of the said A. B. think fit: Provided always that if any son for whose advancement money shall be raised as aforesaid shall die under the age of twenty-one years, the sum so raised shall not be reckoned or taken in account as part of the money raiseable for portions under the foregoing trust unless the same added to the money raiseable for portions shall exceed the sum of £10,000, in which last-mentioned case the money raiseable for portions shall be reduced to such a sum as with the sum raised for advancement as aforesaid will make together £10,000:

Trustees to raise moiety of presumptive shares of sons for advancement.

CONVEYANCE TO SECURE JOINTURE.

AND IT IS DECLARED that subject to the foregoing trusts and power the trustees of these presents shall permit the rents and profits of the hereditaments comprised in the said term to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the said term: AND IT IS DECLARED that these presents shall be deemed a settlement, and that the said E. F. and G. H. shall be deemed the trustees hereof for all the purposes of the Settled Land Act, 1882: PROVIDED ALWAYS that it shall not be necessary for the said A. B. when intending to make a sale, exchange, lease, mortgage, or charge under the powers of that Act, to give any notice of his intention in that behalf to the trustees of these presents, or their solicitor, as required by section 45 of that Act: PROVIDED ALWAYS and it is hereby further declared that if the said A. B. shall at any time hereafter make other provision for securing the said annual sum of £—— payable to the said C. D., and the money raiseable for portions as aforesaid, to the satisfaction of the trustees of these presents, either by settling other freehold, copyhold, or leasehold hereditaments of sufficient value to the uses upon the trusts, and with and subject to the powers and provisions hereinbefore limited, declared, and contained concerning the said freehold premises hereby conveyed, or by investing in the names of the said trustees, in or upon any stocks, funds, or securities authorised by law as investments for trust-moneys, such a sum of money as in the opinion of the trustees will be sufficient for that purpose, then and in such case the said yearly rent-charge of £——, and the term of five hundred years respectively hereinbefore limited shall cease and be void: AND IT IS ALSO DECLARED that the statement or certificate in writing of the trustees of these presents that the said A. B. has made other provision for securing the said annual sum and portions to the satisfaction of the said trustees shall be conclusive evidence of the fact so stated, and no person hereafter deriving title to the hereditaments hereby conveyed, or any part thereof, shall be bound or concerned to see that such provision is of the nature and value hereinbefore required, or otherwise as to the nature or sufficiency of the same: AND IT IS ALSO DECLARED that the statutory power of appointing new trustees shall be vested in the said A. B. during his life.

Subject to above trusts rents to be paid to reversioner.

Settled Land Act to apply except as to notice of sales, &c.

Power to settlor to substitute other lands or stock as a security for jointure.

Certificate of trustees to be sufficient evidence of due provision having been made for jointure and portions.

IN WITNESS, &c.

No. XXX.

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS.

SETTLEMENT *upon* MARRIAGE *of tenant for life in possession in exercise of a* POWER *of* JOINTURING *and* CHARGING *with* PORTIONS *for younger Children.* POWER *to* HUSBAND *if he* MARRIES AGAIN *to admit* CHILDREN *of* SUBSEQUENT MARRIAGE *to* SHARE *in* SUM *provided for* PORTIONS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*intended husband*), of the first part, C. D., of, &c. (*intended wife*), of the second part, and E. F., of, &c., and G. H., of, &c. (*trustees*), of the third part (*Recite settlement under which intended husband has a power to charge the settled estates with a jointure in favour of wife, and with portions for younger children*): AND WHEREAS some of the hereditaments comprised in the said indenture of settlement have been sold under a power of sale therein contained, and other hereditaments have been purchased with the proceeds of such sale and have been settled to the uses of the said indenture: AND WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said A. B. should exercise in the manner hereinafter expressed, the powers of jointuring and charging with portions so as aforesaid vested in him by the said indenture of settlement: NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows:

Recital of settlement and that some of the settled lands have been sold, and other lands purchased.

Recital of intended marriage.

Agreement to exercise powers.

Witnessing part.

Husband appoints jointure to wife.

1. THE said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid, and of all other powers (if any) him hereunto enabling, hereby appoints that the said C. D., if she shall survive the said A. B., shall receive during her life a yearly rent-charge of £—— for her jointure, to be issuing out of all the hereditaments now subject to the uses of the said indenture of settlement (hereinafter called "the settled hereditaments") (*a*), and

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(*a*) If a part only of the settled hereditaments is charged, substitute "the hereditaments described in the schedule hereto, being part of the hereditaments subject to the uses of the said indenture."

to be paid by equal half-yearly payments, the first payment thereof to be made at the expiration of six calendar months after the death of the said A. B.

Husband charges with portions for younger children.

2. The said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid and of all other powers (if any) him hereunto enabling, hereby appoints that the settled hereditaments shall be charged, &c. (*charge of £15,000 for portions for younger children to be divided, &c., with proviso for reducing amount charged in the event of there being only one, two or three younger children, as in Precedent No. XXVII., Art.* 2, *suprà*, pp. 311 *to* 313, *substituting the words* "the said indenture of settlement" *for* "these presents," *and the words* "the settled hereditaments" *for* "the hereditaments hereby settled").

Husband appoints settled hereditaments to trustees for term.

3. The said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement and of all other powers (if any) him hereunto enabling, hereby appoints the settled hereditaments (*b*) unto the said E. F. and G. H. (hereinafter called "the trustees of these presents"), for the term of 1000 years computed from the decease of the said A. B. without impeachment of waste: Upon trust, &c. (*to raise portions, and costs and expenses, and also to raise interest on unpaid portions and annual sums for maintenance, and to permit rents to be received by reversioner, as in Precedent No. XXVII., Article* 3, *suprà*, p. 314.)

4. (*Power of advancement, suprà*, p. 315.)

Power to husband to appoint that children of a subsequent marriage shall share in sum provided for portions.

5. If the said A. B. shall marry again it shall be lawful for him by any deed or deeds or by his will to appoint and declare that his children by any such subsequent marriage or marriages (being daughters or younger sons) shall share in the sum hereby provided for portions: And in such case the foregoing provisions shall take effect in all respects as if the children of such subsequent marriage or marriages had been children of the now intended marriage: Provided always that the part of the sum hereby provided for portions to which the issue of a subsequent marriage or marriages shall become entitled under any appointment to be made by the said A. B. pursuant to the power in that behalf given to him by Article 2 or otherwise, shall not bear

But in such case the children of a subsequent marriage not to take a larger portion than children of intended marriage.

(*b*) *Or*, "the hereditaments described in the schedule hereto."

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS.

a greater proportion to that part of the same sum which the issue of the now intended marriage shall take between them than the number of children of such subsequent marriage or marriages who being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry (*a*).

Settlement to be void if marriage not within twelve months.

6. THESE presents shall be void if the said intended marriage is not solemnized within twelve calendar months from the date hereof.

IN WITNESS, &c.

No. XXXI.

UNDER POWERS TO JOINTURE AND CHARGE WITH PORTIONS BY SON.

SETTLEMENT *on* MARRIAGE *by a* TENANT *for* LIFE *in* REMAINDER *expectant on his* FATHER'S *life estate—in exercise of* POWERS *of* JOINTURING *and* CHARGING *with* PORTIONS.

Parties and recitals.

THIS INDENTURE, &c. (*Parties as in last Precedent. Recite Settlement under which W. B., father of A. B., is tenant for life in possession with remainder to A. B. for life, with remainder to sons of A. B. successively in tail male, and with power to A. B. to jointure a wife and charge with portions for younger children. Recite also that marriage is intended, and agreement to exercise powers as in last Precedent.*)

NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows:—

Appointment of jointure to intended wife with usual powers.

1. THE said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settle-

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(*a*) The power in the text to admit children of a future marriage to participate in the sum provided for portions may reasonably be required on the part of the husband, where he has no other means of making a provision for such children.

UNDER POWERS TO JOINTURE AND CHARGE WITH PORTIONS BY SON.

ment and of all other powers (if any) him hereunto enabling, hereby appoints that if the said C. D. shall survive the said A. B. she the said C. D. shall from and after the death of the said A. B. receive for her jointure the yearly rent-charge next hereinafter mentioned (that is to say), If the said W. B. shall survive the said A. B. then during the joint lives of the said W. B. and C. D. a yearly rent-charge of £—— : AND if the said W. B. shall die in the lifetime of the said A. B., or having survived the said A. B. shall die in the lifetime of the said C. D., then from and after the decease of the survivor of the said W. B. and A. B. a yearly rent-charge of £——, the said yearly rent-charge payable for the time being as aforesaid to be issuing out of the hereditaments described in the schedule hereto, and to be paid by equal half-yearly payments, the first thereof to be made at the expiration of six calendar months after the commencement of the said rent-charge.

Husband charges with portions for younger children

2. THE said A. B., as settlor, in exercise of, &c. (*as before*), hereby appoints that, subject to the yearly rent-charge hereinbefore limited to the said C. D., the hereditaments described in the schedule hereto shall be charged with the sum of £15,000 (reducible as hereinafter is mentioned) for the portions of the children of the said marriage, who being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, and for this purpose the expression "younger sons" shall be deemed to mean and include every son not being at his birth or becoming during his minority an eldest or only son entitled for the time being under these presents to the hereditaments settled by the said indenture of settlement for an estate in tail male in possession or in remainder immediately expectant on the decease of the survivor of the said W. B. and A. B. AND the sum of money charged as aforesaid shall be divided, &c. (*as in Precedent No. XXVII., suprà*, p. 312, *down to the directions as to time of payment*), the portion of each child who attains a vested interest after the death of the survivor of the said W. B. and A. B. to be payable to him or her upon the vesting thereof, and the portion of every child who attains a vested interest therein during the lives of the said W. B. and A. B. or the life of the survivor of them to be payable to him or her upon the death of such survivor. (*Hotchpot clause and proviso for reducing amount charged if there are only one, two, or three younger children, suprà*, p. 313).

Time or payment of portions

UNDER POWERS TO JOINTURE AND CHARGE WITH PORTIONS BY SON.

Appointment to trustees for a term.

3. The said A. B., as settlor, in exercise, &c. (*as before*) hereby appoints the hereditaments described in the schedule hereto unto the said E. F. and G. H. (hereinafter called "the trustees of these presents"), for the term of 1000 years, computed from the decease of the survivor of the said W. B. and A. B. without impeachment of waste, Upon trust, &c. (*to raise portions and interest on unpaid portions, as in Precedent No. XXVII., suprà*, p. 314), And upon further trust that if at the decease of the survivor of the said W. B. and A. B., any child entitled in expectancy to a portion, &c. (*trust to raise annual sums for maintenance of infant younger children, and to permit rents to be received by reversioner, suprà*, p. 314).

Maintenance clause.

Advancement clause.

4. (*Advancement clause as in Precedent No. XXVII. suprà*, p. 315, *adding the following proviso at the end*): Provided always that no money shall be raised under this power during the life of the said W. B. without his consent in writing.

In witness, &c.

The Schedule above referred to.

No. XXXII.

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS BY REMAINDERMAN.

SETTLEMENT *upon* Marriage *of a* Jointure *for wife and* portions *for younger children where* Settlor *has a remote estate in* remainder.

THIS INDENTURE, &c. (*Parties and recitals as in last Precedent, adding recitals showing what estates prior to the settlor's life estate are still subsisting.*)

NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows:—

Appointment of jointure to intended wife with usual power.

1. The said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid and of all other powers (if any) him hereunto enabling,

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS BY REMAINDER-MAN

hereby appoints that if the said C. D. shall survive the said A. B. and the estates for life and in tail limited by the said indenture of settlement and having precedence over the estate for life thereby limited to the said A. B. shall fail or determine in the lifetime of the said C. D., then and in such case the said C. D. shall from and after the death of the said A. B. or the failure or determination of the said preceding estates (which shall last happen) receive during her life a yearly rent-charge of £—— for her jointure to be issuing out of the settled hereditaments and to be paid by equal half-yearly payments, the first payment thereof to be made at the expiration of six calendar months after the time hereby appointed for the commencement of the said rent-charge.

Husband charges settled hereditaments with portions.

2. The said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement and of all other powers (if any) him hereunto enabling hereby appoints that subject to the uses and estates limited by the said indenture of settlement and preceding his estate for life, and subject also to the said yearly rent-charge hereinbefore limited, the settled hereditaments shall be charged with, &c. (*charge for portions, suprà*, p. 312); and for this purpose the expression "younger sons" shall be deemed to mean and include every son not being at his birth or becoming during his minority an eldest or only son entitled under the said indenture of settlement to the settled hereditaments for an estate in tail male in possessio nor in remainder immediately expectant on the life estate of the said A. B., or on some estate prior in order of limitation to such life estate, and also any son who being an eldest or only son entitled in remainder as aforesaid when he attains the age of twenty-one years, shall die before his estate tail falls into possession without having disentailed the said hereditaments or any part thereof, with the consent of the protector of the settlement (*a*): And the sum of money charged as aforesaid shall be divided, &c. (*as in Precedent No. XXVII., suprà*, p. 312, *down to directions as to time of payment of each share*), the portion of every child under the foregoing charge to be paid to him, being a son, at his age of twenty-one years, or being a daughter, at her age of twenty-one years or day of marriage (which shall first happen),

Time for payment of portions.

(*a*) See p. 329, *suprà*, note.

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS BY REMAINDER-MAN

if the said A. B. shall be then dead and all estates for life and in tail limited by the said indenture of settlement having precedence over the life estate of the said A. B. shall then have determined, but if the said A. B. shall be then living, or any of such preceding estates shall be then subsisting, then such portion shall not be payable until the decease of the said A. B., and the determination of all the preceding estates, unless the said A. B. (if living) and all persons (if any) entitled to the preceding estates shall direct the same to be raised and paid earlier: (*Hotchpot clause, and proviso for reducing amount charged in the event of there being only one, two, or three younger children, suprà*, p. 313).

Appointment of settled hereditaments to trustees for a term to raise portions and annual sums for maintenance.

3. The said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement, and of all other powers (if any) him hereunto enabling, hereby appoints that (subject and without prejudice to the uses and estates limited by the said indenture of settlement, and preceding the estate for life thereby limited to the said A. B., and subject to the said yearly rent-charge of £—— hereinbefore limited), the settled hereditaments shall go, remain, and be to the use of the said E. F. and G. H. (hereinafter called "the trustees of these presents"), for the term of 1000 years computed from the decease of the said A. B., and so that the said term shall follow in order of limitation the life estate of the said A. B., Upon, &c. (*Trusts to raise portions, and interest on unpaid portions, as in Precedent No. XXVII., suprà*, p. 314), And upon further trust that if at the decease of the said A. B., or the failure or determination of the estates for life and in tail preceding the estate for life of the said A. B. under the said indenture of settlement (which shall last happen), any child, &c. (*Trust to raise annual sums for maintenance of infant younger children, &c., suprà*, p. 314.)

Advancement clause

4. (*Advancement clause as in Precedent No. XXVII., suprà*, p. 315, *adding at the end the following proviso*): Provided always that no money shall be raised under this power during the continuance of any estate or estates for life or in tail under the said indenture of settlement, having precedence over the life estate of the said A. B. without the consent of the person or persons entitled to such preceding estate or estates.

In witness, &c.

No. XXXIII.

TRANSFER *by a* REGISTERED PROPRIETOR *of* FREEHOLD LAND *in order to constitute the* TRANSFEROR *and* THREE OTHER PERSONS *registered Proprietors with a view to the* SETTLEMENT *made by the next* PRECEDENT.

No. THE LAND TRANSFER ACT, 1875.

Office of Land Registry.

I, A. B., of, &c. (*transferor*), the registered proprietor of the freehold land entered in the register under the above number, in consideration of a marriage about to be solemnised between me and C. D., of, &c. (*wife*), transfer such land to the said A. B. and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*).

Dated this day of .

(Signed) A. B.

Witness

X. Y., a Solicitor.

No. XXXIV.

SETTLEMENT *of* REAL ESTATE *by a* REGISTERED PROPRIETOR (*a*) *containing similar* PROVISIONS *to Precedent No. XXVII., the fee simple of the* LAND *having been* TRANSFERRED *to the* TRUSTEES *jointly with the* SETTLOR *by a separate instrument so as to constitute them* REGISTERED PROPRIETORS *pursuant to the* LAND TRANSFER ACT, 1875.

BY A REGISTERED PROPRIETOR.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*husband*), of the first part, C. D., of, &c. (*intended

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(*a*) In order to make this collection of precedents complete, a form of strict settlement by a registered proprietor is here given, but the fact that a registered proprietor cannot make an effectual settlement of real estate except through the intervention of trustees, is one of the reasons which is

BY A REGISTERED PROPRIETOR.

Recital of agreement for settlement.

wife), of the second part, E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part, and X. Y., of, &c., of the fourth part: WHEREAS a marriage, &c. (*recital of intended marriage*): AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said A. B., being the registered proprietor of the hereditaments described in the schedule hereto, should settle the same upon the trusts and in the manner hereinafter expressed: AND he has accordingly by an instrument bearing even date with these presents in the manner prescribed by the Land Transfer Act, 1875, and the rules made in pursuance thereof, transferred the said hereditaments unto the said A. B., E. F., G. H., and I. K., to the intent that they shall as soon as conveniently can be after the said intended marriage, cause themselves to be entered on the register as the proprietors thereof: AND it is intended that an entry shall be made on the register to the effect that when the number of registered proprietors shall be reduced below two no registered disposition shall be made except under the order of the Court (*b*): NOW THIS INDENTURE made in consideration of the said intended marriage WITNESSETH AND DECLARES as follows:—

Conveyance by registered proprietors to use of settlor for life with remainder to the use of the trustees in fee simple.

1. THE said A. B., as settlor, and the said E. F., G. H., and I. K., as trustees, hereby convey unto the said X. Y., all, &c. (*parcels*), To hold the same (hereinafter called the hereditaments hereby settled) unto the said X. Y. in fee simple: To THE USE of the said A. B. during his life, without impeachment of waste, and after his decease To THE USE of the said E. F., G. H., and I. K.

likely to prevent an owner of a family estate from availing himself of the Land Transfer Act. At present, according to the usual form of a strict settlement, the trustees take no estate in the freehold, but have merely powers enabling them to intervene at the request of the settlor, or during the minority of a tenant in tail, or on other occasions when the exigencies of the settlement require it. Where, however, land is registered, it will probably be thought necessary, for the protection of the interests created by the settlement, that he should constitute the trustees registered proprietors, either alone or jointly with himself. In the form given above it is supposed that the settlor and trustees are constituted registered proprietors, for which purpose they must be clothed with the legal estate in fee simple as joint tenants. They then by a separate deed (which will not be registered) convey the property to a grantee to uses to the use of the settlor during his life with remainder to the use of the trustees in fee simple upon trusts creating equitable estates tail and for securing a jointure and portions for younger children. The effect of such a deed will be to make the settlor tenant for life, with all the powers conferred on a tenant for life by statute.

(*b*) See 38 & 39 Vict. c. 87, sect. 83, sub-sect. 3.

(hereinafter called "the trustees of these presents") in fee simple, UPON TRUST in the first place for securing in the manner hereinafter mentioned the payment of the several annual and gross sums of money hereinafter charged on the said hereditaments as and when the same respectively shall become payable: AND subject thereto, IN TRUST for the first and other sons of the said A. B. by the said C. D. successively, according to seniority in tail male, with remainder IN TRUST for the said A. B. in fee simple.

In trust to secure annual and gross sums charged thereon and subject thereto to first and other sons of the marriage in tail male remainder to husband in fee.

2. IF the said C. D. shall survive the said A. B., the trustees of these presents shall, out of the rents and profits of the hereditaments hereby settled, pay to the said C. D. during her life for her jointure, and in lieu of all dower and freebench, the annual sum of £——, by equal half-yearly payments, the first thereof to be made at the expiration of six calendar months after the decease of the said A. B.

Trust to pay jointure to wife if she survives settlor.

3. THE hereditaments hereby settled shall be charged, &c. (*charge of portions, sum charged to be divided between two or more children, &c., time for payment of portions, suprà*, pp. 312, 313).

4. THE trustees of these presents shall by mortgage of the said hereditaments or a competent part thereof, or by any other reasonable ways and means, raise the sum or sums of money (if any) which shall become payable for a portion or portions under the foregoing charge in that behalf at the time or respective times hereinbefore appointed for payment thereof respectively, except so far as any part thereof shall have been previously raised under the power of advancement hereinafter contained, and shall also, &c. (*raise interest on unpaid portions, suprà*, p. 314.)

Trust to raise portions by mortgage.

5. IF at the decease of the said A. B. any son or unmarried daughter entitled in expectancy to a portion under the foregoing trust shall be under the age of twenty-one years, the trustees of these presents shall, with and out of the rents and profits of the said hereditaments, or by any other reasonable ways and means, raise such annual sum for the maintenance and education of each such minor as the said trustees shall think fit, not exceeding what the interest of the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and shall apply the annual sum to be so raised for the maintenance

Trust to raise annual sums for maintenance of infant younger children.

BY A REGISTERED PROPRIETOR.

and education of such minor accordingly, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof.

Power to trustees to raise moiety of presumptive portions of sons for advancement.

6. It shall be lawful for the trustees of these presents at any time upon the request of the said A. B. during his life, and after his decease at their discretion, to raise by mortgage of the said hereditaments or any part thereof, or by any other reasonable ways or means, any part or parts not exceeding one moiety of the presumptive portion of any son in the sum of money hereinbefore charged for portions, and to apply the same for his advancement, preferment, or benefit in such manner as the said A. B. shall request, or the said trustees after his decease shall think fit.

Power to husband to charge with jointure and portions for future wife and children of future marriage.

7. It shall be lawful for the said A. B. if he shall marry again at any time or times either before or after each such future marriage (but subject to the foregoing charge for portions of the younger children of the now intended marriage) by any deed, &c. (*to jointure a future wife and charge with portions for younger children, suprà*, p. 315): And the said A. B. may in and by such appointment direct the trustees of these presents during the minority, &c. (*to raise annual sum for maintenance of minors entitled to portions in expectancy and to raise one half of presumptive portions of sons for advancement, and proviso limiting amount raisable, suprà*, p. 316.)

8, 9, 10–11. (*Clauses the same as Nos.* 6, 7, 8–9, *in Precedent No. XXVII.*

12. Upon any lease, sale, mortgage, or other disposition of the hereditaments hereby settled or any of them under the powers of the Settled Land Act, 1882, or under any power herein contained, the registered proprietors shall make, do, and execute, or cause or allow to be made, done, and executed all such acts, deeds, instruments, and things (including all proper entries in the land registry) as shall be necessary to give effect to such lease, sale, mortgage, or other disposition.

13. The power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall for the purposes of these presents be vested in the said A. B. during his life: And upon every appointment of new trustees such instruments and things shall be executed and done as will constitute the trustees for the time being (jointly

with the said A. B., if living) registered proprietors of the hereditaments subject to this settlement. AND upon every change of the registered proprietorship an entry shall be made on the register to the effect that when the number of registered proprietors shall be reduced below two, no registered disposition shall be made except under the order of the Court.

BY A REGISTERED PROPRIETOR.

No. XXXV.

POST-NUPTIAL SETTLEMENT *of a sum of* STOCK *on the* WIFE *and* CHILDREN *of the* SETTLOR (*a*).

POST-NUPTIAL SETTLEMENT.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*settlor*), of the one part, and C. D. and E. F., of, &c. (*trustees*), of the other part: WHEREAS the said A. B., being desirous of making some provision for his wife and issue, has purchased the sum of £—— Consolidated £3 per cent. annuities in the names of the said C. D. and E. F., to be held by them upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same: NOW THIS INDENTURE WITNESSETH, that the said A. B., in consideration of his natural love and affection for his wife and issue, hereby irrevocably directs and declares, and IT IS HEREBY AGREED as follows:—

Parties.

Recital of intention to settle.

Witnessing part.

1. THE said C. D. and E. F. (hereinafter called "the trustees"), shall retain the said, &c. (*Trust to retain stock or change investment, suprà*, p. 228.)

Trustees to retain or change investments.

2. THE trustees shall pay the income of the trust funds to the said A. B. during his life, and after his death shall pay the said income to X. B., the wife of the said A. B., if she shall survive him: AND from and after the death of the said A. B., and the death or second marriage (which shall first happen) of the said X. B., shall stand possessed of the trust funds: IN TRUST for all or any one or more of the issue of the said A. B. as well by the said X. B. as by any future wife (such issue being

Trusts for settlor and wife and issue.

(*a*) As to voluntary settlements, see *suprà*, p. 216.

born in the lifetime of the said A. B.), at such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, and in such manner as the said A. B. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said A. B. as well by the said X. B. as by any future wife, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, in equal shares; and if there shall be only one such child, the whole to go to that one child: But so nevertheless that, &c. (*Hotchpot clause, suprà*, p. 228); And if there shall be no such child, then IN TRUST for the said A. B. absolutely.

Power to settlor to appoint life interest to a future wife.

3. NOTWITHSTANDING the foregoing trusts in favour of his issue, the said A. B. may, if he marries again, by deed or will appoint that the whole or any part of the income of the said trust funds shall be paid after his death to his widow during her life, or for any less period.

Advancement clause.

4. THE trustees may at any time or times raise any part or parts not exceeding together one moiety of the vested or presumptive share of any child of the said A. B. under these presents, and apply the same for his or her preferment, advancement, or benefit, but so that every such advancement shall be with the consent of the parents or surviving parent of the child, or, if there shall be no surviving parent, at the discretion of the trustees.

5. *Direction as to shares of infant married woman, suprà*, p. 229.

6. ALL moneys (*Investment clause, suprà*, p. 231).

Appointment of new trustees clause.

7. THE power of appointing new trustees conferred by statute shall for the purpose of these presents be vested in the said A. B. during his life.

IN WITNESS, &c.

No. XXXVI.

VOLUNTARY SETTLEMENT (*a*) *by a* BACHELOR *for the benefit of* HIMSELF AND HIS ISSUE, *with* POWER *to appoint* LIFE INTEREST *to any* WIFE; POWER OF REVOCATION *with the consent of the* TRUSTEES.

VOLUNTARY SETTLEMENT BY A BACHELOR.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*settlor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*trustees*), of the other part (*recite will under which settlor is entitled to a share of the testator's residuary estate, subject to the life interest of the testator's wife*): AND WHEREAS the said A. B. is desirous of settling his reversionary share under the said will in the manner hereinafter expressed, and the said C. D. and E. F. have at his request agreed to be the trustees of the said intended settlement: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recital of desire to make settlement.

1. THE said A. B., as settlor, hereby assigns unto the said C. D. and E. F. (hereinafter called "the trustees"), ALL, &c. (*describe the settlor's share intended to be settled*): To HOLD the same (subject to the life interest therein of the said ——) unto the trustees, UPON THE TRUSTS and subject to the powers and provisions hereinafter declared and contained.

Settlor assigns reversionary share to trustees.

2. THE trustees shall, &c. (*Trust to require transfer when shares fall into possession, and to invest and vary investment, suprà*, p. 243.)

Trust to invest.

3. THE trustees shall pay the income of the trust funds to the said A. B. during his life, and the said A. B. may by deed or will appoint that after his death the whole or any part of the said income shall be paid to any widow whom he may leave during her life, or for any less period.

Trust to pay income to settlor for life with power to appoint life interest to a widow for life.

4. AFTER the death of the said A. B., and subject to any interest appointed to a widow as aforesaid, the trustees shall stand possessed of the trust funds, IN TRUST for all or any one or more of the issue of the said A. B. born in his life-time, at such age or time, ages or times, in such shares, if more than one, and in such manner as the said A. B. shall by

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(*a*) As to voluntary settlements, see *suprà*, p. 216.

VOLUNTARY SETTLEMENT BY A BACHELOR.

Trusts for children of settlor.

deed or will appoint, and in default of any such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children (if any) of the said A. B. who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, in equal shares, and if there shall be only one such child, then the whole to go to such one child: BUT so that no child who or any of whose issue shall take any share under any such appointment as aforesaid, shall take any share in the unappointed part (if any) of the trust funds without bringing the share or shares appointed to him or her, or to his or her issue into hotch-pot, and accounting for the same accordingly: AND if there shall be no issue of the said A. B. in whom the trust funds shall become absolutely vested under the foregoing trusts, then IN TRUST for such person or persons being a brother or sister or brothers or sisters, or the issue of a brother or sister or brothers or sisters of the said A. B., and in such manner as the said A. B. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the person or persons who, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the decease of the said A. B. if he had died possessed thereof and intestate.

In default of issue for brothers and sisters, &c. of settlor as he shall appoint, and in default of appointment for his next of kin.

5, 6, 7. (*Directions as to shares of infant married women, advancement and investment clauses, suprà*, pp. 255, 257.)

8. THE power of appointing new trustees conferred by statute shall for the purposes of these presents be vested in the said A. B. during his life.

Power for settlor to revoke with consent of trustees.

9. IT shall be lawful for the said A. B. at any time or times hereafter, with the consent of the trustees, by any deed or deeds under the hand and seals of the said A. B. and of the trustees, to revoke all or any of the trusts declared by these presents of and concerning the trust funds or any part thereof, and to declare any new or other trusts of or concerning the same: AND the trustees may give or withhold their consent to any such revocation and new appointment as aforesaid at their absolute discretion, and without being answerable for the exercise of such discretion.

IN WITNESS, &c.

WILLS.

THE principal characteristic of a will is, that it is ambulatory and revocable, and has no operation during the life of the testator. The form of the instrument is not of importance, so long as its terms are testamentary (*a*); but if the instrument is in the form of a deed, the circumstance of the grantor reserving a life interest to himself, with a general power of revocation, does not make it testamentary (*b*).

Characteristics of a will.

It is proposed in this Dissertation to consider the subject of wills under the following heads:—I. What property can be disposed of by will, who may make a will, how a will must be executed and attested, and what amounts to a revocation of a will. II. As to the time from which a will speaks, what property passes under a general devise or bequest, and what words are sufficient to carry the fee simple. III. In what cases the trustees take the legal estate under a devise, and as to the extent of their estate. IV. Legacies, general and specific, vested and contingent, gifts to children, next of kin, legal representatives, &c. V. Lapse. VI. For what period the vesting of property given by will may be postponed, or income may be accumulated, having regard to the rule against perpetuities and the Thellusson Act. VII. Gifts in mortmain, and particularly gifts to charities. VIII. Conversion. IX. In what cases precatory words create a trust. X. The effect of a charge of debts and the implied power of sale thereby created. XI. Descent and the mode in

Division of the subject.

(*a*) See Williams on Executors, Pt. 1, Bk. ii. c. 2, sec. 3.

(*b*) Tompson *v.* Browne, 3 M. & K. 32.

which the personal estate of an intestate is distributed. And XII. The stamp duties on probates and letters of administration, and under the Legacy and Succession Duty Acts.

I. *What property may be disposed of by will, who may make a will, how a will must be executed and attested, and what is a revocation of a will.*

What property may be disposed of by will.

The Act 1 Vict. c. 26 (commonly called the Wills Act), enables every person to dispose by will of all real and personal estate which he shall be entitled to, at law or in equity, at the time of his death, and which, if not so disposed of, would devolve upon his heir at law or customary heir, or if he became entitled by descent upon the heir at law or customary heir, of his ancestor, or upon his executor or administrator, including estates *pur autre vie*, contingent, executory, or other future interests, and rights of entry for conditions broken (*c*).

As to copyholds.

A devisee of copyholds must pay the fees and fines on his admission as if he were a surrenderee; and the testamentary disposition should be entered on the court rolls (*d*).

Estates *pur autre vie.*

An estate *pur autre vie* of a freehold nature not disposed of by will is assets by descent in the hands of the heir, if it comes to him by reason of special occupancy, as in the case of freehold land in fee simple; and where there is no special occupant, it goes to the executor or administrator of the party that had the estate thereof by virtue of the grant, and an estate *pur autre vie* coming to an executor or administrator, either by reason of a special occupancy or by virtue of the Act, is assets in his hands, to be applied and distributed in the same manner as the personal estate of the testator or intestate (*e*).

In a case where an estate *pur autre vie* was limited to a devisee and his heirs, and the devisee died without

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(*c*) Sect. 3. A person in possession of land without other title has a devisable interest: Asher *v.* Whitlock, L. R. 1 Q. B. 1.

(*d*) Sects. 4, 5—see 4 & 5 Vict. c. 35, s. 89.

(*e*) Sect. 6.

heirs, it was held that, under the above section, the estate went to his executors (*f*).

Infants.

Previously to the Wills Act an infant could not dispose by will of real estate, but with respect to personalty a female might make a will at twelve and a male at fifteen, if proved to be a person of discretion (*g*). Since the Wills Act *no* will of an infant is valid (*h*).

Married women.

A married woman may dispose by will of any real or personal property belonging to her for her separate use, whether under the Married Women's Property Acts or otherwise, including the savings of her separate income, and may exercise a testamentary power of appointment over real or personal estate. She may also, if an executrix, appoint an executor to continue the representation (*k*). Before the passing of the Married Women's Property Act, 1882, a will made by a married woman who afterwards became a widow did not pass property acquired by her after her husband's death (*m*), she being under an absolute incapacity to make a will, except as to her separate property, but it is apprehended that a will made by a married woman after the 31st December, 1882, will by virtue of section 1 of that Act, pass all property acquired by her afterwards, whether during the coverture, or after she has become a widow.

Traitors and felons.

Traitors and felons are incapacitated from alienation, while undergoing their punishment, but as the incapacity ceases at death, they may, it is apprehended, dispose by will of real or personal estate (*n*).

Lunatics, &c.

Lunatics, idiots, and other persons incapacitated from disposing of property by deed, are equally incapable of making a will.

How a will made before the Wills Act must have been executed.

Under the Statute of Frauds it was necessary that a devise of freehold estates should be attested by three credible witnesses; but until the Wills Act a will of copyholds or of personal estate required no attestation,

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(*f*) Reynolds *v.* Wright, 25 Beav. 100; on appeal, 2 De G. F. & J. 590.

(*g*) Bishop *v.* Sharp, 2 Vern. 469.

(*h*) Sect. 7.

(*k*) 2 Bright's H. & W. 66; 1 Wms. Exors. Part i. Book 2, c. 1, s. 2; *Ib.* Part i. Book 5, c. 2, s. 1.

(*m*) Noble *v.* Willock, L. R. 8 C. A. 779.

(*n*) 33 & 34 Vict. c. 23; 1 Jarm. on Wills, 44.

and even if the testator's signature was wanting, the testamentary instrument was supported, if it was reduced into writing by the testator's direction and in his lifetime (*o*). But since the Wills Act every will whether of real or personal property, must be in writing and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and the witnesses must attest and subscribe the will in the presence of the testator, but no form of attestation is necessary (*p*). And an appointment made by will in exercise of any power must be executed in like manner, and such execution is sufficient, notwithstanding that some additional or other form of execution or solemnity may be required by the instrument creating the power (*q*). Certain exceptions are, however, allowed as regards the wills of soldiers and sailors (*r*).

Under Wills Act how will must be executed.

Powers of appointment by writing under hand and seal.

Where a power of appointment is to be exercised by a writing under the hand and seal of the donee, it cannot be exercised by a will of the donee, executed according to the formalities of the Wills Act, if it is not also sealed (*s*); and a power of appointing by a writing under hand or by will is not well exercised by a testamentary instrument unattested (*t*).

Position of the signature.

Questions having frequently arisen as to the sufficiency of the signature with reference to its *position*, an explanatory Act (*u*) was passed, which made the signature sufficient if so placed at, or after, or following, or under, or beside, or opposite to, the end of the will, that it should be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and the Act enumerates various circumstances as regards the position which are not to affect the validity of the will.

(*o*) 1 Jarm. on Wills, 98.

(*p*) Sect. 9.

(*q*) Sect. 10.

(*r*) Sects. 11 & 12. See also 28 & 29 Vict. c. 72.

(*s*) West *v.* Ray, Kay, 392; Taylor *v.* Meads, 34 L. J. Ch. 203.

(*t*) *Re* Daly's Settlement, 25 Beav. 456.

(*u*) 15 & 16 Vict. c. 24.

Where a will has a formal attestation clause, and appears on the face of it to be properly executed, the Court will presume that the requirements of the Wills Act have been complied with, although the memory of the witnesses may have failed. When the attestation clause is informal, the presumption *omnia rite esse acta* applies with less force; but even in that case, the leaning of the Court is not to allow the testator's intention to be frustrated by lapse of time, and failure of the memory of the witnesses, and if therefore the circumstances are such as reasonably to lead to the conclusion that the will was duly executed, the Court will adopt such conclusion (*x*). But even where there is a regular attestation clause, the Court cannot pronounce a will to be duly executed, in the face of the direct testimony of the attesting witnesses to the contrary (*y*).

Presumption that will is duly executed and attested when it applies.

Under the Statute of Frauds, a person taking any interest under a will was considered not to be a credible witness, and consequently a will was invalid if any one of the three attesting witnesses took any beneficial interest under it. Under the Wills Act, a legacy or other benefit given to an attesting witness, or to his or her wife or husband, is void, but the will is in other respects good, and the legatee, &c., is an admissible witness (*z*).

Person interested not a sufficient witness under old law.

Legacy to witness void.

A creditor (when the will contains a charge of debts) may be an attesting witness, and so also may an executor (*a*).

Where there is a gift to a class as joint tenants, and one of the class is an attesting witness, the joint tenancy is not severed, but the whole goes to the other members of the class (*b*).

Where one of a class is an attesting witness.

A legacy given by a will to an attesting witness is rendered valid by a codicil confirming the will attested by other witnesses (*c*). But if a testator makes first a will, secondly, a codicil giving a legacy to a person who is an attesting witness to such codicil, and thirdly, a second

Legacy to attesting witness when rendered valid by subsequent codicil.

(*x*) Vinnicombe *v.* Butler, 34 L. J., Prob. 18.

(*y*) Croft *v.* Croft, 34 L. J., Prob. 44.

(*z*) Sect. 15.

(*a*) Sects. 16 & 17.

(*b*) Young *v.* Davies, 2 Drew. & Sm. 167.

(*c*) Anderson *v.* Anderson, L. R. 13 Eq. 381.

codicil which refers to the will but takes no notice of the first codicil, the legacy given by the first codicil remains invalid (*d*).

By what local law the execution of wills must be regulated.

A will disposing of land of any tenure must be executed and construed according to the law of the country in which the property is situate, whatever may be the domicile of the testator. But a will of moveable estate must be executed and construed according to the law of the country in which the testator is domiciled, subject however to the provisions of a recent Act, commonly called Lord Kingsdown's Act (*e*). By this Act it is provided that every will or testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin (*f*). The Act further provides that every will, &c., made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at his death) shall, as regards personal estate, be held to be well executed, and shall be admitted to probate, &c., if the same be executed according to the laws for the time being in force in that part of the United Kingdom where the same is made (*g*). And that no will, &c., shall be held to be revoked, or to have become invalid, nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making the same (*h*).

Lord Kingsdown's Act.

A will made abroad by a British subject to be admitted to probate here, if executed according to law of place where made.

Power to Her Majesty to make arrangements with foreign

And by another Act (*i*) it is provided that whenever a convention to that effect is made with a foreign state, Her Majesty may by Order in Council direct that a

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(*d*) Burton *v.* Newbury, 1 Ch. D. 234.

(*e*) 24 & 25 Vict. c. 114.

(*f*) Sect. 1.

(*g*) Sect. 2.

(*h*) Sect. 3. See *in re* Reid, 1 L. R., Prob. 74.

(*i*) 24 & 25 Vict. c. 121.

British subject resident in the foreign country shall not be deemed to have acquired a domicile for testamentary purposes or purposes of succession to moveables, unless he has been resident in such foreign country a year, and has deposited in a public office there a declaration in writing of his intention to become domiciled there: and corresponding provisions are enacted as to subjects of foreign states dying in Great Britain.

state as to domicile.

Previously to the Wills Act the will of a woman was revoked by marriage, and the will of a man was in most cases revoked by marriage *and* the birth of a child, but not by marriage alone.

Effect of marriage as a revocation.

Every will made since the Wills Act is revoked by marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to the heir, customary heir, executor, or administrator, or the person entitled as next of kin under the Statute of Distributions (*k*). A will or codicil may also be revoked by another will or codicil duly executed or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence, and by his direction, with the intention of revoking the same (*l*), and no obliteration, interlineation, or other alteration will have any effect unless such alteration is executed in like manner as is required for the execution of the will; but the will, with such alteration as part thereof, will be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin, or in some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will (*m*).

Will may be revoked by another will or burning, &c.

Interlineation, &c. must be executed.

No revoked will or codicil can be revived, otherwise than by the re-execution thereof, or by a codicil showing an intention to revive the same, and if any will or codicil which is partly revoked and afterwards wholly

How revoked will may be revived.

(*k*) Sect. 18.

(*l*) Sect. 20.

(*m*) 24 & 25 Vict. c. 114, s. 21.

revoked is revived, such revived will will not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown (*n*).

If a person makes a second will, revoking the first, and then destroys or otherwise revokes the second, the first is not thereby revived.

Dependent relative revocation.

Where a will is destroyed, the presumption is that the act was done *animo revocandi*, but this presumption may be repelled by evidence that such animus did not exist. If a will is destroyed or torn with the intention of setting up some other testamentary instrument, the act of destruction will be a revocation, in case only the testamentary instrument intended to be thereby set up proves efficacious. The revocation in such case is called a dependent relative revocation.

Thus, where a man made a second will, slightly differing from the first, but which second will was invalid for want of a proper attestation, and the testator, after making such second will, cancelled the first by tearing off the seal, it was held that such cancellation being made under the mistaken notion that the second will was effectual was not a revocation (*o*). And in another case where a testator, after having made two successive wills, the second revoking the first, destroying the second erroneously, supposing that in so doing he was reviving the first, it was held that the second will was not revoked (*p*).

II. *As to the time from which a will speaks, what property passes under a general devise and bequest, and what words are sufficient to carry the fee simple.*

Every devise of real estate was formerly specific.

Formerly every devise of freehold and copyhold lands included only such property as the testator was seised of or entitled to at the date of the will, and a devisee of copyholds had no devisable estate before admittance (*q*).

(*n*) Sect. 22.

(*o*) Onions *v.* Tyrer, 2 Vern. 742.

(*p*) Powell *v.* Powell, 1 L. R. Prob. 209.

(*q*) Wainright *v.* Elwell, 1 Madd. 627.

Whenever therefore a will contained a *general* devise, and lands were subsequently acquired by the testator which he wished to be included in such devise, it was necessary for him to republish his will, or make a codicil: but in the case of copyholds, a surrender to the use of the testator's will operated as a republication of the will so as to include the after-acquired copyholds in the previous general devise (*r*).

Operation of a general bequest of personalty.

On the other hand, a general bequest of personal estate embraced all the personalty of which the testator was possessed at the time of his death, the will for this purpose speaking from the death of the testator.

Effect of disturbance of testator's estate after date of will

One of the consequences of the above-mentioned doctrine with regard to real estate was, that any disturbance of the devised estate between the date of the will and the testator's death operated as a revocation—as, for instance, the entering into a binding contract for sale, although it afterwards might be rescinded or abandoned (*s*); a conveyance, although its effect might be to re-vest the property immediately in the testator, so that he should be in of his old use; the surrender of a lease for lives in consideration of a new lease (*t*); the re-conveyance of land in mortgage to the testator to uses to bar dower where the proviso in the mortgage was for the reconveyance to him, his heirs and assigns (*u*); or the taking a conveyance by the testator to uses to bar dower of property previously to the will contracted to be purchased by him, where the contract did not provide for the form in which the property should be conveyed to the purchaser (*x*). But if the equitable title was simply clothed with the legal estate, there was no revocation, as when the testator by his will devised estates which he had previously contracted to purchase, and subsequently to his will the legal estate was conveyed to him, his heirs and assigns (*y*).

(*r*) Sug. V. & P. 155.

(*s*) Tebbott *v.* Voules, 6 Sim. 40; Andrew *v.* Andrew, 8 De G. M. & G. 336.

(*t*) Poole *v.* Coates, 2 Dru. & War. 493.

(*u*) Plowden *v.* Hyde, 2 De G. M. & G. 684.

(*x*) Ward *v.* Moore, 4 Madd. 368; see also Bigg *v.* Watt, 4 W. Rep. 786; 11 Jar. Con. by S. 79, *et seq.*

(*y*) Ward *v.* Moore, *ubi suprà.*

So where property was limited to the testator to the usual uses to bar dower, and he appointed and released the property by way of mortgage, subject to a proviso that on payment of the debt, the mortgagee would reconvey the estate to the testator, his heirs, appointees, or assigns, or to such other person or persons, to such uses, and in such manner as he or they should direct, and the mortgagor subsequently made his will, and, after the date of the will, the property was re-conveyed to him to uses to bar dower, it was held that the devise was not revoked (*z*).

Under Wills Act, conveyance after will does not prevent its operating on testator's interest at death.

It is now provided by the 23rd section of the Wills Act, that "no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which the will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death."

Rule of equity as to conversion not affected.

The 23rd sect. does not affect the rule of equity which treats property agreed to be sold as personalty; so that if land devised by a will is afterwards contracted to be sold, but the sale is not effected in the lifetime of the testator, the purchase-money belongs to his personal representatives and not to the devisee (*a*); and this is the case even when the devise is to a trustee upon trust for sale (*b*).

Will now speaks from death as to realty as well as personalty, unless a contrary intention appears.

The Wills Act also provides that every will shall be construed with reference to the real and personal estate comprised therein to speak and take effect as if it had been executed immediately before the death of the testator, unless a *contrary intention* appears by the will (*c*), so that a general devise of the testator's lands will embrace not only those lands which he is entitled to, or has power over, at the date of his will, but all his after-

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(*z*) Plowden *v.* Hyde, 2 De G. M. & G. 684.

(*a*) Farrar *v.* Earl Winterton, 5 Beav. 1; Moor *v.* Raisbeck, 12 Sim. 123; *In re* Manchester and Southport Railway Company, 19 Beav. 365.

(*b*) Gale *v.* Gale, 21 Beav. 349.

(*c*) Sect. 24.

acquired estates—and a copyholder has now a devisable estate before admittance.

What is sufficient evidence of a contrary intention.

In *Cole* v. *Scott* (*d*), a devise of all the lands whereof "I am now seised" was held not to pass lands acquired after the date of the will, but this decision must be considered as depending not only on the use of the word "now," but on other expressions in the will which seemed to show an intention on the part of the testator to exclude after-acquired lands. It has been held that a devise of all the lands of which "I am seised" includes after-acquired lands (*e*); and that a devise of all the lands of which "I am seised" in a particular place, passes lands in that place subsequently acquired (*f*); so also a devise of a house in which "A. now resides with the stables and appurtenances thereto belonging" was held to pass a piece of land which the testator had subsequently acquired and converted into a garden which he had attached to the house, so that the house and garden were occupied together up to the testator's death (*g*), and under a devise of "my estate called the C. estate," lands subsequently acquired and added to the estate were held to pass (*h*).

In *Douglas* v. *Douglas* (*i*), the Vice-Chancellor said, "I can imagine that, under the new statute, a gift of 'all my stock' would pass all stock to which the testator was entitled at the time of his death. But suppose the bequest were of 'all my stock which I have purchased,' that would make a considerable difference, and would, I think, be enough to show that the testator was defining the particular portion of property which he intended to give as being property then in his possession."

A bequest of "my New $3\frac{1}{4}$ per Cent. Annuities" was held to comprise all the New $3\frac{1}{4}$ per Cents. which the testatrix had at her death (*k*). V.-C. Wood in this case said, "If I refer to a particular thing, *e.g.*, a ring or a

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(*d*) 1 M. & G. 518.

(*e*) Doe *v.* Walker, 12 M. & W. 590; Lady Langdale *v.* Briggs, 8 De G. M. & G. 391.

(*f*) Lord Lilford *v.* Keck, 30 Beav. 300.

(*g*) *Re* The Otley & Ilkley Ry. Co., 11 Jur. N. S. 818.

(*h*) Castle *v.* Fox, L. R. 11 Eq. 542.

(*i*) 1 Kay, 400.

(*k*) Goodlad *v.* Burnett, 1 K. & J. 341.

horse, and bequeath it as 'my ring,' or 'my horse,' it would seem that the contrary intention to which the 24th section refers 'appears by the will,' and the will speaks from the date of its execution; but when a bequest is of that which is generic, of that which may be increased or diminished, the Act requires something more on the face of the will for the purpose of indicating such 'contrary intention' than the mere circumstance that the subject of the bequest is designated by the pronoun 'my.'" In another case, a testator bequeathed to his brother "all the shares which I now possess in the Union Bank in Calcutta." After the date of the will and before his death, his property in the Company's funds largely increased, and it was held that the whole of the property passed under the will (*l*). Again, where a testator gave "all my money, bank and other shares, freehold property, plate, pictures, coins, books, and any other property that I may now possess," it was held that after-acquired personalty passed under the bequest (*m*). Again, where property being leasehold at the date of the will was bequeathed as leasehold to specific devisees, and the testator afterwards acquired the reversion in fee simple, it was held that the fee simple passed by the specific devise, and not under a residuary devise in the same will (*n*).

Under old law general devise did not *primâ facie* include leaseholds or property over which testator had a power of appointment.

Previously to the Wills Act a general devise of land included neither leasehold land nor land of any tenure over which the testator had a mere power of appointment, except in those cases in which he had no other land at the date of the will upon which the will could operate (*o*), or unless an intention was to be clearly gathered from the will to dispose of the leaseholds, or to exercise the power under the general devise; and in the absence of an intention to exercise the power a general

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(*l*) Hepburn *v.* Skirving, 4 Jur. N.S. 651; see also Pierce *v.* Harrison, 25 L. T. 264; Stillwell *v.* Mellersh, 20 L. J. Ch. 356; O'Toole *v.* Browne, 23 L. T. 111; Webb *v.* Byng, 1 K. & J. 580; Rothes *v.* Salomons, 15 Jur. 483.

(*m*) Wagstaff *v.* Wagstaff, L. R. 8 Eq. 229.

(*n*) Miles *v.* Miles, L. R. 1 Eq. 462; Cox *v.* Bennett, ib. 6 Eq. 422; Saxton *v.* Saxton, 13 Ch. D. 359.

(*o*) Rose *v.* Bartlett, Cro. Car. 293; Gully *v.* Davis, L. R. 10 Eq. 562; 1 Jar. on Wills, 573—587.

bequest did not operate as an execution of general powers over personalty.

Rule altered by Wills Act.

By sect. 26 of the Wills Act it is enacted, that a devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold or leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold and leasehold estates of the testator, or his customary, copyhold and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

Whether leaseholds will pass under devise of real estate.

It follows from the above enactment, that a general devise of *land* will now pass leaseholds and copyholds as well as freeholds. The construction of the expression "real estate," since the Act as applied to leaseholds, is not so clear. It has been held that leaseholds will pass by the description of the testator's real estate in a particular place (*p*), but if a will gives the real estate to A., and the personal estate to B., the question under which gift leasehold land would pass, is still open to doubt. Such authority as there is, seems to be in favour of its being regarded as personal estate (*q*).

Effect under Wills Act of general devise as to property which testator has power to appoint.

The 27th section provides, that a general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general

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(*p*) Moase *v.* White, 3 Ch. D. 763.

(*q*) See Turner *v.* Turner, 21 L. J. Ch. 843; Wilson *v.* Eden, 5 Exch. 752.

manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Power given to survivor may be exercised by will of person who afterwards becomes survivor.

A general power given to the survivor of several persons may be exercised by a general devise in a will executed by the ultimate survivor during their joint lives; and in a case where such a power was vested in A. B., and C., and C., who was a married woman, ultimately became the survivor, it was held that the power was well exercised by a residuary devise in the will of C. made by her will under coverture, and during the life of B. (*r*).

Effect of residuary gift with regard to property subject to power.

A gift by will of the residue of a testator's estate passes property over which the testator has, at the date of the will, a general power of appointment, and also property over which he acquires such a power after the date of his will (*s*). And it has been held that the words, "I constitute A. B. my residuary legatee" mean the same as a general gift to A. of the residue, and consequently operates as an appointment in his favour under a general power (*t*). In a late case, a testatrix having a general power of appointment over a trust fund, made a will, giving pecuniary legacies and appointing executors, but the will made no reference whatever to the trust fund or to the power, and contained no residuary bequest. It turned out that the assets of the testatrix other than the trust fund were insufficient to pay the legacies, and Vice-Chancellor Stuart held, that the bequests of the legacies were bequests of personal property, "described in a general manner," within the meaning of the 27th section, and that such legacies were payable out of the trust fund subject to the power (*u*). And it has also

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(*r*) Thomas *v.* Jones, 2 J. & H. 475; S.C. on appeal, 1 De G. J. & S. 63.

(*s*) Stillman *v.* Weedon, 16 Sim. 26; Patch *v.* Shore, 2 Dr. & Sm. 589; Boyes *v.* Cook, 14 Ch. D. 53.

(*t*) Spooner's Trust, 2 Sim. N.S. 129.

(*u*) Hawthorn *v.* Shedden, 3 Sm. & G. 293; *Re* Wilkinson's Trusts, L. R. 8 Eq. 487.

been held that a direction to the executors to pay the debts out of the testator's personal estate makes property over which he has a power of appointment part of his general assets (*v*).

An appointment by will makes fund part of testator's estate.

An appointment by will under a general power makes the appointed property (whether real (*x*) or personal) part of the testator's general estate, although some of the objects may fail by lapse or otherwise, and consequently a general devise or bequest has the same operation (*y*).

Act does not apply to special powers.

The 27th section does not apply to special powers, *i.e.*, powers exerciseable in favour of particular objects only. Consequently a general devise of all the testator's property is not an execution of such a power (*z*). The power or the property which is the object of it must be referred to. Where the will contains only a general reference to the testator's powers, as where a devise or bequest is expressed to be made in pursuance of all powers vested in the testator, or is of all the property over which he has any power of appointment, it is a question of intention to be collected from the whole of the instrument whether such a devise operates as an execution of a special power. It will be so held, if the gift is wholly or substantially in favour of persons who are objects of the power (*a*), even though the power is to some extent exceeded. Thus where the bequest was to trustees in trust to pay debts and divide the residue among objects of the power, the power was held to be executed, notwithstanding the trust to pay debts (*b*). Again, where the bequest was to an object for life with remainder in favour of his children, such children not being objects, the life estate was held to be well appointed (*c*). And in the converse case a power to give

In what cases a special power will be executed by general devise.

(*v*) Wilday *v.* Barnett, L. R. 6 Eq. 193.

(*x*) *Re* Van Hagan, 16 Ch. D. 18.

(*y*) *Re* Pinédé's Settlement, 12 Ch. D. 667.

(*z*) Cloves *v.* Audry, 12 Beav. 604.

(*a*) Bailey *v.* Lloyd, 5 Russ. 330; Pidgely *v.* Pidgely, 1 Coll. 255; Cowx *v.* Foster, 1 J. & H. 30; Ferrier *v.* Jay, L. R. 10 Eq. 550.

(*b*) Cowx *v.* Foster, 1 J. & H. 30; Ferrier *v.* Jay, L. R. 10 Eq. 550; Clogstoun *v.* Walcott, 13 Sim. 523 is disapproved of in the latter cases.

(*c*) Pidgely *v.* Pidgely, 1 Coll. 255.

a life interest in a fund to the donee's wife was held well executed by a will which gave all the property over which the testator had any power of appointment to the wife absolutely (*d*).

Trust and mortgage estates when included in a general devise, where testator died before 1882.

A general devise in the will of a person who has died before the 1st January, 1882, includes estates vested in the testator as a trustee or mortgagee unless a contrary intention can be inferred from expressions in the will or the purposes and objects of the testator (*e*). Thus, a devise of the testator's property to A. absolutely, clearly passes trust and mortgaged estates (*f*), and in a case where a testator devised all his property to his wife, her heirs, executors, administrators, and assigns, "for all my estate and interest therein, to and for her own absolute use and benefit, and to be disposed of by her by deed, will, or otherwise as she may think fit," it was held that trust estates passed under such devise (*g*). And according to another case trust estates pass under a devise to a woman for *her sole use* (*h*).

If property has been devised by a person who has died before the 1st January, 1882, upon trust for sale (*i*), or charged with debts (*k*) or annuities (*l*), or with a gross sum (*m*), or to uses in strict settlement (*n*), trust estates do not pass, as the nature of the disposition sufficiently indicates that the testator did not intend to include any property beyond that in which he was beneficially interested. And for the same reason a devise to an unascer-

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(*d*) *Re* Teape's Trust, L. R. 16 Eq. 442; Thornton *v.* Thornton, ib. 20 Eq. 599.

(*e*) Lord Braybroke *v.* Inskip, 8 Ves. 417. Until this case, the rule seems to have been unsettled. See Duke of Leeds *v.* Munday, 3 Ves. 348; *Ex parte* Sergison, 4 Ves. 147; Attorney-General *v.* Buller, 5 Ves. 341; *Ex parte* Brettel, 6 Ves. 577; and the observations of the court on those cases in Lord Braybroke *v.* Inskip, 8 Ves. pp. 433 to 435.

(*f*) Marlow *v.* Smith, 2 P W. 197; Lord Braybroke *v.* Inskip, *ubi suprà;* Sharpe *v.* Sharpe, 12 Jur. 508.

(*g*) Lewis *v.* Matthews, 2 L. R. Eq. 177; *Ex parte* Shaw, 8 Sim. 159.

(*h*) Lindsell *v.* Thacker, 12 Sim. 178, is apparently overruled. See Gilbert *v.* Lewis, 1 De G. J. & S. 38.

(*i*) *Ex parte* Marshall, 9 Sim. 555.

(*k*) Roe d. Reade *v.* Reade, 8 Durn. & E. 118.

(*l*) Duke of Leeds *v.* Munday, 3 Ves. 348; *Ex parte* Morgan, 10 Ves. 101.

(*m*) Rackham *v.* Siddall, 16 Sim. 297; Hope *v.* Liddell, 21 Beav. 183.

(*n*) Co. Litt. 203, b. note 96.

tained class, *e.g.*, to all the testator's nephews and nieces, do not include trust or mortgaged estates (*o*).

Whether a gift of "securities for money," &c., passes legal estate of mortgaged property.

In the absence of a contrary intention, a gift of "mortgages," or "securities for money," in the will of a person who has died before the 1st January, 1882, passes not only the money secured but also the legal estate in the mortgaged property, although the words may be placed among words relating to personal estate only, or the gift may be to the donee, his *executors, administrators, or assigns*, and not to his *heirs*, and although the gift may be subject to debts and legacies, or upon trusts for sale and conversion (*p*). But a bequest of *money on securities* does not carry the legal estate in the mortgaged property (*q*).

Residuary devise following a direction to pay debts, or legacies, passes estates held on mortgage, but whether it passes trust estates *quære*.

A devise in such a will of the residue of a testator's estate, following a direction to pay debts or a bequest of legacies, includes estates vested in a testator as mortgagee in his own right (*r*), but the question whether it includes estates vested in him as a trustee has been the subject of conflicting decisions. Jessel, M. R. has decided that it does not (*s*), and Malins, V.-C. that it does (*t*).

Rule applies to lands, contracted to be sold.

The rule that a general devise passes trust estates unless a contrary intention can be inferred, applies to land which a testator has contracted to sell, the sale being uncompleted at his death. In *Wall* v. *Bright* (*u*), a testator after a contract for sale devised all his lands to trustees in trust for sale, and it was held that the land comprised in the contract passed by the devise. In

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(*o*) *Re* Finney's Estate, 3 Giff. 465. See also Martin *v.* Laverton, L. R. 9 Eq. 563.

(*p*) Renvoize *v.* Cooper, 6 Mad. 371; *In re* King's Mortgage, 5 De G. & Sm. 644; *In re* Field's Mortgage, 9 Hare, 414; *In re* Walker's Estate, 21 Law J. Ch. 674; Knight *v.* Robinson, 2 K. & J. 503; Rippen *v.* Priest, 32 L. J. C. P. 65.

(*q*) *Ex parte* Cautley, 17 Jur. 124; 22 L. J. Ch. 391. In Doe d. Guest *v.* Bennett, 6 Exch. 892, it was held that a devise in these words, "I leave my wife R. H. to receive all moneys upon mortgages," gave her the legal estate in the mortgaged premises; but the decision seems to have been disapproved of by Kindersley, V.-C., in *Ex parte* Cautley; see also *Re* Arrowsmith's Trusts, 4 Jur. N.S. 642.

(*r*) *Re* Stevens, L. R. 6 Eq. 597. See also *Re* Packman and Moss, 1 Ch. D. 214.

(*s*) *Re* Smith's Estate, 4 Ch. D. 70; *Re* Bellis's Estate, 5 Ch. D. 504.

(*t*) Brown and Sibly's contract, 3 Ch. D. 156.

(*u*) 1 J. & W. 494.

Thirtle v. *Vaughan* (*x*), a testator after specific devises gave the residue of his estate to his three children as tenants in common, subject to a gift over as to the share of any child dying under twenty-one. After the date of the will the testator contracted to sell some land, and the Court held that such land did not pass by the will. These two decisions must be reconciled on the ground that in the former case a trust for sale was not considered inconsistent with an intention that the devises in trust should take the subject of an uncompleted contract, whereas the executory devise in the latter was thought inconsistent with such intention.

Land contracted to be sold passes under an express devise of trust and mortgage estates.

In both the above cases there was no express devise of estates vested in the testator as a trustee or mortgagee, and the only question was whether the land passed by the general devise or devolved on the heir at law. It has been lately decided that where a will contains a devise of a testator's general estate, and also a devise of estates vested in him as a trustee or mortgagee, land contracted to be sold passes by the latter (not the former) devise (*y*).

Devolution of trust and mortgage estates on death of a person since 1881.

With regard, however, to persons dying after the 31st December, 1881, it is provided by the Conveyancing Act, 1881 (*yy*), that where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time. It follows that in future a devise of estates vested in a testator as trustee or mortgagee will pass nothing.

Effect of devise without words of limitation under old law.

Prior to the Wills Act, a devise of land without words of limitation conferred an estate for life only on the devisee. But an indefinite devise was frequently enlarged into a fee simple whenever an intention to dispose of

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(*x*) 2 W. R. 632.

(*y*) Lysaght *v.* Edwards, 2 Ch. D. 499. This decision is in accordance with the opinion expressed on this point in the 8th edition of this work.

(*yy*) Sect. 30.

such larger estate could be collected from the language of the will. Thus, if a devise was made on condition that the devisee should pay the testator's debts or certain annuities or legacies, or a particular sum, so as to make the satisfaction of such sums the personal obligation of the devisee, he took an estate in fee simple, on the ground that if he only took an estate for life he might be a loser by such gift (*z*). The devisee also took an estate in fee simple if the devise to him was followed by a gift over on his dying under twenty-one (*a*). Again, a devise of the testator's estate generally, or of his estate in a particular place (*b*), or by a particular name (*c*), or description (*d*), carried the fee. The words "remainder," "reversion," "property," "inheritance," "right," "title," &c., &c., were also terms generally sufficient to carry the fee (*e*).

What was sufficient to carry the fee simple.

Under the Wills Act, a devise of real estate *without words of limitation* operates to pass the fee simple or other the whole estate or interest which the testator had power to dispose of unless a contrary intention appears by the will (*f*).

Effect of similar devise since Wills Act.

III. *In what cases trustees take the legal estate under a devise, and as to the extent of their estate.*

Where property is limited by will *to the use* of trustees, the legal estate vests in them by force of the words employed (*g*), but if the devise is to them to the use of or in trust for other persons, the question whether they take the legal estate depends on whether they have any duties to perform which require that they should take it. And when it has been thus ascertained that they take *some* estate, a question often arises as to the

Question whether trustees take legal estate; upon what it depends.

(*z*) Doe *v.* Holmes, 8 T. Rep. 1; Goodright *v.* Stocker, 5 T. R. 13; Goodtitle *v.* Maddern, 4 Ea. 496.

(*a*) Doe *v.* Cundall, 9 Ea. 400.

(*b*) Barry *v.* Edgworth, 2 P. Wms. 522.

(*c*) Chichester *v.* Oxenden, 4 Taunt. 176.

(*d*) Roe d. Child *v.* Wright, 7 East, 259; Harding *v.* Gardiner, 1 Br. & B. 72; Paris *v.* Miller, 5 M. & S. 408.

(*e*) 2 Jarm. Wills, 274, *et seq.*

(*f*) Sect. 28.

(*g*) 2 Jarm. Wills, 289.

duration of such estate. As regards wills governed by the old law, the rule is that a devise to trustees which does not expressly limit the duration of the estate gives them an interest commensurate with the trusts to be performed. But as regards wills made since the Wills Act the rule has been modified by the 30th and 31st sections of the Act, which provide that where any real estate (other than or not being a presentation to a church) is devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable or an estate in freehold is thereby given to him expressly or by implication: And that where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate or in the surplus rents and profits thereof is not given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will, in such real estate, and not an estate determinable, when the purposes of the trust shall be satisfied.

Cases in which trustees have been held to take legal estate.

A devise to trustees upon trust, or to the intent that they shall receive the rents and pay them to A. (*h*), or upon trust to pay out of the rents, after deducting rates, taxes, and repairs, such clear sum as should remain to A. (*i*), or to permit the devisee to receive the *net* rents (*k*), vests the legal estate in the trustees.

But under a devise to A. upon trust to permit B. to receive the rents (*l*), or to pay unto or permit B. to receive the rents (*m*), or to receive the rents and pay the same to A., or otherwise permit him to receive the

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(*h*) Doe *v.* Homfray, 6 Ad. & El. 206.

(*i*) Shapland *v.* Smith, 1 B. C. C. 74.

(*k*) Barker *v.* Greenwood, 4 M. & W. 421.

(*l*) Right d. Phillips *v.* Smith, 12 East, 455.

(*m*) Doe d. Leicester *v.* Biggs, 2 Taunt. 109.

same (*n*), the legal estate vests in B., and A. takes no estate. But under a devise (prior to the Married Women's Property Act, 1882), to a trustee to permit a *feme covert* to receive the rents for her separate use, the trustee takes the legal estate, as otherwise the rents would be receivable by the husband, which could not have been the testator's intention (*o*). And when there are several trusts for the separate use of married women during their lives, separated by intervening limitations which if taken alone would vest the legal estate in the persons beneficially interested thereunder, the legal estate will be held to be vested in the trustees throughout, and the intervening estates are equitable only (*p*).

Where trustees are directed to convey.

Trustees will take the legal fee, when by the will they are directed to convey to a third person (*q*).

Devise to trustees in trust to pay annuities, &c.

In wills under the old law a devise to trustees in trust to pay annuities, and subject thereto in trust for A. gives the trustees an estate during the lives of the annuitants, and a devise to trustees in trust to apply the rents for the maintenance of A. until he attains twenty-one, and then to A. absolutely, gives the trustees an estate during A.'s minority only, but in both these cases the trustees would take the entire fee simple under a will made since the Wills Act.

A trust to raise money by sale or mortgage gives the trustees the legal estate.

Where land is devised to trustees in trust to raise money by sale or mortgage for payment of the testator's debts, or such of his debts as his personal estate will not satisfy (*r*), or upon trust to demise or let the same (*s*), and subject to such trusts the land is directed to be held in trust for other persons, or is given directly to other persons, the trustees take the legal estate whether the will is under the old or the new law.

So also does a power, whether express or implied, from a direction to pay debts.

So also they take the legal estate under a devise upon trusts, which taken alone would not have that effect, if such devise is followed by a power enabling them to

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(*n*) Baker *v.* White, L. R. 20 Eq. 166.

(*o*) 2 Jar. on Wills, p. 243.

(*p*) Harton *v.* Harton, 7 T. R. 652; Brown *v.* Whiteway, 8 Hare, 145; see also Doe d. Waller *v.* Claridge, 6 C. B. 641.

(*q*) Garth *v.* Baldwin, 2 Ves. Sen. 646.

(*r*) Bagshaw *v.* Spencer, 1 Ves. Sen. 142; Gibson *v.* Lord Montford, *ib.* 485.

(*s*) Doe *v.* Willan, 2 B. & Ald. 84.

raise money by sale or mortgage for payment of debts (*t*), and the result is the same, if the power arises by implication, as where there is a direction that the debts shall be paid by the executors, who are also the trustees (*u*), and according to one case (*x*) a mere direction for payment of debts without saying by whom, followed by a devise to trustees who are also the executors, has the same effect, but the last case seems hardly consistent with an earlier one, where real estate was charged with the testator's debts, so far as the personal estate should be insufficient to pay the same, and subject thereto, was devised to trustees upon trusts by way of settlement, and it was held that they did not take the legal fee on the ground that there was no sufficient indication of the testator's intention that they were the persons by whom the debts were to be paid (*y*).

Effect of power of leasing being given to trustees.

If the words of a will made under the old law were otherwise sufficient to carry the fee to the trustees, the fact that they were empowered to grant leases afforded an argument of weight in favour of their being construed so as to confer the whole legal fee on the trustees, but it was not conclusive, and when the testator's intention could be effected by holding that the trustees had an estate during the continuance of the trusts of the will, with a power to lease while the estate vested in them for the purpose of the trust continues, the devise was so construed (*z*).

Under Wills Act, trustees take either a life estate or a fee.

The effect of the 30th and 31st sections of the Wills Act, appears to be that if there is no express limitation of the estate to be taken by the trustee, and yet there are purposes which require that he should take *some* estate, he must take either an estate for life or an estate in fee simple. For instance, a devise to A. in trust to permit B. to receive the rents for life, with remainder to

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(*t*) Doe d. Cadogan *v.* Ewart, 7 Ad. & El. 637 : Doe *v.* Davis, 1 Q. B. 430, 10 L. J. Q. B. 169.

(*u*) Spence *v.* Spence, 31 L. J. C. P. 189.

(*x*) Creaton *v.* Creaton, 3 S. & G. 386 ; Marshall *v.* Gingell, W. N. 1882, p. 118.

(*y*) Kendrick *v.* Beauclerk, 3 Bos. & Pul. 175.

(*z*) Doe d. Keen *v.* Wallbank, 2 B. & Ad. 554 ; Doe d. Kimber *v.* Cafe, 7 Exch. 675 ; Blagrave *v.* Blagrave, 4 Exch. 550.

C., would vest no estate in the trustee, as there are no purposes requiring him to take any estate; a devise to A. in trust to pay the rents to B. for life, with remainder to C., would vest the legal estate in the trustee for the life of B. only; while a devise to A. in trust to accumulate the rents for ten years for a particular purpose, and subject thereto, in trust for B., would vest the legal fee in A., as the purposes of the trust require that the trustee should take some estate, but there is no *express* limitation of the estate to be taken by him, and the beneficial interest is not given to any person for life (*zz*).

Application of rule to copyholds or leaseholds.

The rule which (subject to the modifications introduced by the Wills Act) limits the estate of the trustees under an indefinite devise to one commensurate with the trusts to be performed, applies to copyholds and leaseholds. Thus, a devise of copyholds to A. and his heirs in trust for B. and his heirs, or in trust for B. for life, and at his death in trust for C. and his heirs, gives A. the legal estate in the whole customary fee, because copyholds are not within the Statute of Uses; but if the devise be to A. and his heirs in trust for B. for life and after his death *to* (not in trust for) C. and his heirs, A. takes an estate for the life of B. only, with a legal remainder on the death of B. to C. (*a*), and in like manner a bequest of leaseholds to A. in trust for B. gives A. the whole term, but under a bequest to A. in trust for B. for life, and after B.'s death *to* C., it is apprehended (*b*) that A. takes the term, subject to an executory bequest in favour of C. to take effect on B.'s death (*c*).

(*zz*) 2 Jarm. on Wills, 3rd ed. p. 296; Hawkins on the Construction of Wills, p. 157.

(*a*) Doe d. Woodcock *v.* Barthrop, 5 Taunt. 382; Baker *v.* White, L. R. 20 Eq. 166.

(*b*) Stevenson *v.* Mayor of Liverpool, L. R. 10 Q. B. 81.

(*c*) All limitations to trustees in a *deed* are strictly construed, and will take effect according to their strict legal meaning, unless the very object and intention of the instrument would be defeated by such a construction. (See Venables *v.* Morris, 7 T. R. 342; Wykham *v.* Wykham, 18 Ves. 395; Colmore *v.* Tyndale, 2 Y. & J. 605.) In a case where in terms a legal fee was given to trustees to preserve contingent remainders, and afterwards by the same instrument a term of 500 years was limited to the same trustees, their executors, administrators, and assigns, for the purpose of raising a given sum of money by sale or mortgage for younger children's portions, the court held that the limitation of

IV. *Legacies, general and specific vested and contingent, gifts to children, next of kin, &c.*

Definition of a general legacy.

Legacies are either general or specific. A general legacy is a gift of money or something else to be paid, raised, or procured out of the testator's personal estate generally, and is not necessarily a part of such estate. Thus a gift of £100 money or £100 stock is a good legacy, although the testator may have no cash or no stock at his death, and in such a case his executors must raise or buy it out of whatever property he may leave. A specific legacy is a gift of some specified part of the testator's property, as a gift of "all my furniture," or "all the furniture that I may leave at my death," or "all my shares and stock in a railway company," and such a gift will include whatever property of the kind described the testator may leave at his death. But the thing given must be severed from the rest of the testator's property, and form the subject of a distinct gift. Thus, if a testator gives "all my leasehold property, furniture, stock in trade, and all other my estate and effects," then the whole gift is residuary (*d*).

Definition of a specific legacy.

Abatement in case of deficiency of assets.

If there is a deficiency of assets to pay the testator's debts, the general legacies abate rateably, but the specific legacies are not liable to abatement until the fund applicable for general legacies is exhausted. And a specific legatee is entitled to have his legacy exonerated out of the general estate from charges created by the testator as distinguished from charges incidental to the property, such as the rent on leaseholds, or the calls on railway shares (*e*).

Specific legatee entitled to be exonerated from charges.

Ademption.

It follows from the nature of a specific legacy, that if the testator has not at his death any article answering

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a term of years to the trustees was so inconsistent with the limitation of the fee to them, that the limitation to the trustees and their heirs must be restricted to an estate *pur autre vie* by necessary implication (Curtis *v.* Price, 12 Ves. 89).

(*d*) See Bothamley *v.* Sherson, L. R. 20 Eq. 304.

(*e*) Bothamley *v.* Sherson, *ubi suprà.*

the description of the thing bequeathed, the legacy fails. If the gift is of something which was his property when he made his will, and he parts with it before his death, it is said to be adeemed.

Interest on legacies.

The legatee is entitled to the interest and produce of a specific legacy from the testator's death (*f*), and the current dividend is apportionable under the Apportionment Act (*g*). With respect to a general legacy, if no time is appointed for its payment, it will carry interest at the rate of £4 per cent. per annum from the expiration of one year from the testator's death; and this rule extends to legacies under the will of a *feme covert* made in exercise of a power (*h*); but if a time of payment is mentioned, then the legacy will not carry interest before the appointed period,—as if a legacy is directed to be paid to the legatee when he shall attain twenty-one (*i*). If, however, the legatee is the child of the testator and under age, interest on the legacy would be allowed him for maintenance from his parent's death, if there is no other fund provided for that purpose (*k*).

Annuity commences from death.

An annuity for life, given by will, commences from the death of the testator, and the first payment (where the will is silent as to the time of payment) is due at the expiration of one year from that time (*l*).

Legacy payable at a future day, whether vested or contingent.

When a legacy is given, payable at a future day, as on the legatee attaining a particular age, a question often arises whether the time for payment is annexed to the form or the substance of the gift; in other words, whether the arrival of the time is a condition precedent to the vesting of the legacy. Upon this subject the following points have been settled by the authorities.

Points decided on this subject.

Where there is a complete gift independent of direction as to time of payment.

1. Where there is a gift complete in itself, with a direction superadded as to the time of payment, as if a legacy is given to A., to be paid to him at twenty-one, or to the children of A., to be paid to them respectively

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(*f*) Barrington *v.* Tristram, 6 Ves. 345; Wright *v.* Warren, 4 De G. & Sm. 367.

(*g*) Pollock *v.* Pollock, L. R. 18 Eq. 329.

(*h*) Tatham *v.* Drummond, 2 H. & M. 262.

(*i*) Hearle *v.* Greenbank, 3 Atk. 716.

(*k*) Harvey *v.* Harvey, 2 P. Wms. 21; Incledon *v.* Northcote, 3 Atk. 438; Wynch *v.* Wynch, 1 Cox, 433.

(*l*) Gibson *v.* Bott, 7 Ves. 96.

as and when they shall respectively attain twenty-one, the legacy vests immediately, and the payment only is postponed (*m*). And it makes no difference that the direction as to the time of payment precedes the words of gift; thus, a direction to pay or assign a legacy, and its investments to the children of A., as and when they shall respectively attain twenty-one, "to whom I give and bequeath the same accordingly," has been held to confer a vested interest on all the children living at the testator's death (*n*).

Where time of payment is of the essence of the gift.

2. Where the time of payment is annexed to the gift itself, or where there is no gift except in the direction to pay or divide, as for example, where a legacy is given to A. when he shall attain a certain age, or to the children of A. when they shall respectively attain a certain age, or where trustees are directed to pay a legacy to A., or to divide a trust fund among the children of A. "when" he or they shall attain a certain age, *and there is nothing more;* in each of these cases the legacy is contingent (*o*).

Where interest is given to legatee, or for his maintenance.

3. But very slight circumstances in the context will alter the construction, particularly where the bequest is of a residue, and not of a legacy merely (*p*). Thus, if a legacy is given to a person "at," or "when" he attains a certain age, and is accompanied by a gift of the interest in the meantime, or by a direction to apply such interest or any part thereof for his maintenance, or if the legacy is directed to be immediately separated from the estate, the legacy vests at once, and the same principle applies to a gift to a class of persons where there is a gift of the interest or a direction to apply the interest for their respective maintenance (*q*).

(*m*) Monkhouse *v.* Holme, 1 B. C. C. 297; Vivian *v.* Mills, 1 Beav. 315; Blease *v.* Burgh, 2 Beav. 221; May *v.* Wood, 3 B. C. C. 471; Sidney *v.* Vaughan, 2 Bro. Parl. Ca. 254; Booth *v.* Booth, 4 Ves. 399; Shrimpton *v.* Shrimpton, 31 Beav. 425.

(*n*) *In re* Bartholomew, 1 Mac. & G. 354; King *v.* Isaacson, 1 Sm. & Gif. 371.

(*o*) Hanson *v.* Graham, 6 Ves. 239; Chance *v.* Chance, 16 Beav. 572; Ford *v.* Rawlins, 1 Sim. & Stu. 328; Lloyd *v.* Lloyd, 3 K. & J. 20.

(*p*) Pearman *v.* Pearman, 33 Beav. 394, 397.

(*q*) Hanson *v.* Graham, 6 Ves. 239; Saunders *v.* Vautier, Cr. & Ph. 240; Davies *v.* Fisher, 5 Beav. 201; Harrison *v.* Grimwood, 12 Beav.

Vawdry *v.* Geddes.

In *Vawdry* v. *Geddes* (*r*), there was a bequest of residue for the testatrix's four sisters for life, and after their deaths to apply the income for the benefit of the children of each daughter until they should respectively attain twenty-two, when they were to be entitled to their mother's share of the principal, with a gift over on the death of any of them under that age, and it was held that the children did not attain a vested interest until twenty-two, and consequently that all the gifts subsequent to the life estates given to the four sisters were void for remoteness. Sir J. Leach in that case observed, "Where *interim* interest is given, it is presumed the testator meant an immediate gift, because, for the purpose of interest, the particular legacy is to be immediately separated from the bulk of the property, but that presumption fails entirely when the testator has declared that the legacy is to go over in case of the death of the legatee before a particular period." This doctrine seems to lead to the inference that where a legacy is given in terms which, but for the gift over, would constitute it a vested legacy, the mere circumstance of the gift over prevents its vesting. But such a proposition could not be maintained, for in ordinary cases a gift over upon a contingency does not prevent vesting in the first donee, but the first gift is considered to be vested subject to being divested; and in a recent case, where there was a bequest to the children of A. for their maintenance until twenty-two, they to receive the principal and interest as they attain such age, in equal shares, followed by a gift over should either die before twenty-two, it was held that the children took vested interests, notwithstanding the gift over, and that the gift over being too remote was void (*s*).

But a gift to A. for life, and after her decease to

192; Leeming *v.* Sherratt, 2 Hare, 14; *In re* Smith's Will, 20 Beav. 197; Eccles *v.* Birkett, 4 De G. & Sm. 105; *Re* Rouse's Estate, 9 Hare, 655; James *v.* Lord Wynford, 1 Sm. & Gif. 40; Tatham *v.* Vernon, 29 Beav. 604; *Re* Hart's Trusts, 3 De G. & J. 198; Shrimpton *v.* Shrimpton, 31 Beav. 425; Dundas *v.* Wolfe Murray, 1 H. & M. 425; Fox *v.* Fox, L. R. 19 Eq. 286.

(*r*) 1 R. & M. 208.

(*s*) Hobbs *v.* Parsons, 2 Sm. & Gif. 212; see also Davies *v.* Fisher, 5 Beav. 201; Hardcastle *v.* Hardcastle, 1 H. & M. 405.

her children who shall attain twenty-two, followed by a maintenance clause as to children under twenty-one, is void for remoteness; the gift being to a class, the time for ascertaining which is beyond the prescribed limits (*t*).

Case in which principle does not apply to a gift to a class.

Where an entire fund is given to a class of persons at a given age with a direction to the trustees to apply the income of the fund, or any part of it, for the maintenance of the members of the class generally, not confining such direction to the share of each particular member, this does not create a vested interest in a member of the class who dies under the age (*tt*).

Where payment of legacy is postponed for convenience of estate.

4. Where the payment of the legacy is postponed for the convenience of the estate,—as if a legacy is directed to be paid to A., after the decease of B., to whom a life interest is bequeathed,—A. takes a vested interest on the testator's decease, the payment to A. being postponed only for the purpose of enabling B. to enjoy a prior life interest in the legacy (*u*).

Gift to a woman on marriage, how construed.

A simple gift of a *legacy* to a woman, to be paid to her on her marriage, provided she marries with the consent of certain persons, has been held to be contingent (*x*). But where a *residue* was bequeathed to trustees upon trust to pay the income to the testator's two grandnieces (who were both of age), until their respective marriages, and from and after their respective marriages to assign to them their respective moieties, and one of the grandnieces afterwards died without having married, it was held that she took a vested interest in her moiety, one of the grounds of the decision being that there was a difference between a legacy and a residue with respect to the application of the rules as to vesting (*y*). And in a recent case a testator gave one-third of his residue to his son and daughter in equal shares, the share of the son to vest at twenty-four, and the share of the daughter to vest on her marriage, with the consent of her guardian, with

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(*t*) Thomas *v.* Wilberforce, 31 Beav. 299.

(*tt*) *Re* Parker, 16 Ch. D. 44.

(*u*) Adams *v.* Robarts, 25 Beav. 658.

(*x*) Atkins *v.* Hiccocks, 1 Atk. 500.

(*y*) Booth *v.* Booth, 4 Ves. 399.

a gift over of the son's share on his death under twenty-four, and of the daughter's share on her death without having married "with such consent as aforesaid;" and it was held that the daughter having attained twenty-one without being married was entitled to her share (z).

Legacies charged on land.

The rule which is established as to legacies charged on and payable out of real estate, is well expressed by Mr. Butler, who observes, that, "when a legacy is bequeathed to a child on his attaining twenty-one or marrying, or on any other event personal to him, the legacy is evidently postponed to the time specified, from its being considered that the legatee will then want the benefit of the legacy; but when the estate is devised to a person for life, and after his decease is charged with a legacy, the legacy is evidently postponed till the decease of the devisee for life from its being incompatible with his life estate that it should be raised in his lifetime. The payment of the legacy is therefore considered to be postponed in the first case from regard to circumstances personal to the legatee, and in the second from regard to the circumstances of the estate, and it has been inferred that, in cases of the first description the testator does not intend the legatee shall receive the legacy, unless the circumstances happen in which the testator made it payable, and that in cases of the second description the testator intends the legatee shall receive it at all events. In the former case, therefore, it has been held that if the legatee dies while the time of payment is in suspense, the legacy sinks into the land for the benefit of the inheritance, and in the latter case it has been held, that if the legatee dies during the continuance of the preceding estate or interest, his personal representatives will be entitled on its determination to have the legacy raised for their benefit (*a*). As to cases of the first description, however, the legacy will vest if the testator declare that it shall do so at his death" (*b*).

Legacy charged on

In every case where a legacy charged on land is

(*z*) West *v.* West, 4 Giff. 198.

(*a*) Fearne's Cont. Rem. p. 556, n.

(*b*) Watkins *v.* Cheek, 2 S. & St. 199.

Land devised is not affected by lapse of devise.

given on a contingency, and the contingency does not happen, the charge sinks for the benefit of the devisee (*c*). On the other hand, if land is devised charged with a sum of money, the lapse of the devise does not affect the charge (*d*), and if a gift is made to A. with a gift over on a contingency (which happens) to B. and B. dies in the testator's lifetime, the subject of the gift goes to the residuary legatee (*e*).

Construction of testamentary gifts to children.

In the bequest of legacies to children, a question often arises, what objects are to be included in the bequest under certain circumstances, and the rules of construction on this subject, laid down by Mr. Jarman in his valuable Treatise on Wills, will place the matter before the reader in a useful and intelligible form. He says: "First. That an immediate gift to children, whether it be to the children of a living or a deceased person, and whether to children simply, or to all the children, and whether there be a gift over in case of the decease of any of the children under age or not, comprehends the children living at the testator's death (if any), and those only. Secondly. That where a particular estate or interest is carved out, with a gift over to the children of the person taking that interest, or the children of any other person, such gift will embrace not only the objects living at the death of the testator, but all who may subsequently come into existence before the period of distribution. Thirdly. That where the period of distribution is postponed until the attainment of a given age by the children, the gift will apply to those who are living at the death of the testator, and who come into existence before the first child attains that age, *i.e.*, the period when the fund becomes distributable in respect of any one object or member of the class (*f*). Fourthly. With regard to immediate gifts, it is well settled that if there be no object *in esse* at the death of the testator, the gift will embrace all the children who may subsequently come into existence by way of executory gift; and with regard

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(*c*) Gawler *v.* Standerwick, 2 Cox, 15.

(*d*) Wigg *v.* Wigg, 1 Atk. 382.

(*e*) O'Mahoney *v.* Burdett, L. R. 7 H. L. 388.

(*f*) Gimblett *v.* Purton, L. R. 12 Eq. 427.

to gifts preceded by an anterior interest, the weight of authority is in favour of the position, that in all such cases, except in the instance of a legal remainder of real estate, if there is no object at the time of the vesting in possession, all the children subsequently born will be let in. Fifthly. That where the words, 'to be born,' or 'to be begotten,' are annexed to a devise or bequest to children, if the gift be immediate so that it would, but for the words in question, have been confined to children (if any) existing at the testator's death, they will have the effect of extending it to all the children who shall ever come into existence" (*g*).

Interest to be taken where power of appointment amounts to a trust.

Sometimes a power of appointment amongst children, or some other class of objects, is so expressed as to amount to a trust in favour of such objects in default of appointment. Where this is the case, the objects take an interest commensurate with that which might have been appointed (*h*); and if the power is given in terms which are particularly applicable to a tenancy in common, the objects will take as tenants in common, and not as joint tenants. In *Crozier* v. *Crozier* (*i*), an estate was devised to A. for life, with remainder to his issue, to be divided between and amongst them in such manner, shares, and proportions as he by his will should appoint. A. having died without having exercised the power of appointment, it was held that on his death the issue took absolute interests as tenants in *common* (*k*). In *Wace* v. *Mallard* (*l*), the testator bequeathed his property to his widow, her heirs, executors, administrators, and assigns, for her sole benefit, with full confidence that she would appropriate it for the benefit of all her children, and it was held that the bequest amounted to a gift to the widow for life, with a power of appointment in favour of her children, with a gift in default of appointment to her children as *joint tenants*.

Who take under a gift

A gift to the next of kin of A. without more, creates

(*g*) See 2 Jar. on Wills, 155, *et seq.*; Mogg *v.* Mogg, 1 Mer. 654.

(*h*) Crozier *v.* Crozier, 3 D. & W. 383; Kavanagh *v.* Morland, 1 Kay, 16.

(*i*) *Ubi suprà.*

(*k*) See also White *v.* Wilson, 22 L. J. Ch. 62.

(*l*) 21 L. J. Ch. 355.

to next of kin, and *simpliciter*,

a joint tenancy in the persons who are nearest of kin to A. in equal degree without reference to the statutes of distribution, so that if A. leaves two brothers and a nephew (the child of a deceased brother), or a father and child, the two brothers to the exclusion of the nephew in the one case, and the father and child in the other case, would take the property as joint tenants (*m*). But if the gift is to the next of kin according to the statutes of distribution, the persons to take will be the relations of A., amongst whom the personal property of an intestate is made distributable by the statute, and such persons will take as tenants in common (*n*); but a wife or husband (not being of the kin of A.) cannot take under such a gift (*o*).

or under a gift to next of kin according to the statutes of distribution.

At what time next of kin are to be ascertained.

It is a settled rule that under a gift to the next of kin of the testator, whether the gift be immediate or preceded by a life interest, the persons to take are those who answer the description at the death of the testator unless a contrary intention is clearly shown (*p*).

A gift to the person or persons entitled under the statute of distributions, excludes the husband, whose right is not under that statute (*q*).

Who takes under a gift to executors or administrators,

A gift of personal property to A. for life, and after his decease to his executors or administrators, vests the subject of the gift absolutely in A., and on his death it passes to his executors or administrators as part of his assets, and it makes no difference that between the life interest and the ultimate gift intermediate interests are given to other persons or a power of appointment is given to A. himself (*r*). And a gift to the executors or administra-

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(*m*) Elmsley *v.* Young, 2 M. & K. 780; Withy *v.* Mangles, 4 Beav. 358; 10 Cl. & Fin. 215; Baker *v.* Gibson, 12 Beav. 101; Lucas *v.* Brandreth, 28 Beav. 274; Avison *v.* Simpson, John. 43; Rook *v.* Attorney-General, 31 Beav. 313; Halton *v.* Foster, 3 L. R. Ch. App. 505.

(*n*) Bullock *v.* Downes, 9 H. L. C. 30; Ranking's Settlement Trusts, 6 L. R. Eq. 601.

(*o*) Cholmondeley *v.* Lord Ashburton, 6 Beav. 86; Kilner *v.* Leech, 10 Beav. 362.

(*p*) Bullock *v.* Downes, *ubi suprà*; Wharton *v.* Barker, 4 K. & J. 488; Lee *v.* Lee, 1 Dr. & Sm. 85; Moss *v.* Dunlop, John. 490; Mortimer *v.* Slater, 7 Ch. D. 322.

(*q*) Milne *v.* Gilbart, 2 De M. & G. 715.

(*r*) Daniel *v.* Dudley, 1 Phil. 1; Attorney-General *v.* Malkin, 2 Phil. 64; Hames *v.* Hames, 2 Keen, 646; Page *v.* Soper, 22 L. J. Ch. 1044; Grafftey *v.* Humpage, 1 Beav. 46. In Mackenzie *v.* Mackenzie, 3 M. & G. 559, there was a gift to A., with tors of A., a deceased person, is a gift to his legal personal representatives as a part of his estate, and not to them beneficially (*s*).

or under a gift to "representatives," or "legal representatives."

The term "representatives" or "legal representatives" means *primâ facie* "executors or administrators" (*t*); but the context frequently shows that it was the intention of the testator to use the term in a different sense,—as if a testator directs that the legal representatives shall take "share and share alike" (*u*), or "*per stirpes*" (*x*), in which cases the persons entitled under the statutes of distribution have been held to be the objects of the gift. Again, if personal estate is given immediately and without the intervention of any previous interests to A., or in case of his death to his "representatives" or "legal representatives," A. takes absolutely if he survives the testator, but if he dies in the testator's lifetime the property goes to the persons entitled to his personal estate under the statutes of distribution, and not to his executors or administrators, on the ground of the improbability that the testator should mean the legacy to be thrown into the general assets of the legatee dying before him (*y*).

Construction of gifts over on death of legatee, to what period death is to be referred.

When a gift of a legacy is followed by a gift over on the death of the legatee, the question often arises whether the death referred to is a death at any time, or a death within a particular period. In *Edwards* v. *Edwards* (*z*) the cases on this subject were divided into four classes. (1) Where the gift is to A., and if he shall die to B.; (2) A gift to A., and if he shall die without

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remainder to his appointees, and A. appointed the property to his executors or administrators, and it was held that it formed part of his personal estate, which might be disposed of by him, or in the event of his intestacy would devolve on his representatives as such.

(*s*) Long *v.* Watkinson, 17 Beav. 471; Trethewy *v.* Helyar, 4 Ch. D. 53.

(*t*) Corbyn *v.* French, 4 Ves. 418; Saberton *v.* Skeels, 1 R. & M. 587; Taylor *v.* Beverley, 1 Coll. 108; Hinchcliffe *v.* Westwood, 2 De G. & Sm. 216; *In re* Crawford's Trusts, 2 Drew. 230; Dixon *v.* Dixon, 24 Beav. 129.

(*u*) Smith *v.* Palmer, 7 Hare, 225; King *v.* Cleveland, 4 De G. & J. 477.

(*x*) Atherton *v.* Crowther, 19 Beav. 448.

(*y*) Bridge *v.* Abbott, 3 B. C. C. 224; Cotton *v.* Cotton, 2 Beav. 67; *In re* Crawford's Trusts, *ubi suprà.* See also *In re* Gryll's Trusts, L. R. 6 Eq. 590.

(*z*) 15 Beav. 357.

children to B.; (3) To X. for life, with remainder to A., and if A. shall die to B.; (4) To X. for life with remainder to A., and if he shall die without children to B., and the Court stated as the result of the cases that, in the 1st class, the contingency is the death of A. in the testator's life; in the 2nd, death at any time; and in the 3rd and 4th, death before X. But it has been decided by the House of Lords that the above rule is incorrect as regards the 4th class of cases, the death there being death at any time as in the 2nd (*a*).

V. *Lapse.*

Lapse, what is?

If a devisee or legatee of real or personal estate dies in the lifetime of the testator, the devise or bequest fails, or, as it is usually expressed, lapses, except in the cases provided for by the Wills Act, which will be presently mentioned.

Destination of the subject of lapsed gifts.

With respect to the destination of lapsed devises and bequests, there was, under the law as it stood prior to the Wills Act, an important difference between real and personal estate. In the case of personal estate, the lapsed legacy fell into the residuary estate unless a contrary intention appeared by the will; but where land was the subject of the lapsed gift, it went to the heir-at-law of the testator.

Under Wills Act lapsed interests in real estate go to residuary devisee.

The 25th section of the Wills Act provides, that, unless a contrary intention shall appear by the will, such real estate, or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

What devises are residuary so as to

The effect of this section is to assimilate the law with regard to the destination of lapsed interests in real and

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(*a*) Mahoney *v.* Burdett, L. R. 7 H. L. 388; Ingram *v.* Soutten, *ib.* 408. But see Olivant *v.* Wright, 1 Ch. D. 346, where the Court thought that the testator showed a contrary intention.

personal estates, and consequently the cases which have been decided in reference to personal estate will now be equally applicable to real estate. The question whether a devise or bequest of real or personal estate is residuary, so as to include lapsed interests, must of course depend upon the particular language used in each case. Words of exception will not of themselves prevent the gift from being residuary, as, for example, where there is a devise or bequest of particular lands or of a specific legacy, followed by a devise or bequest of all other the testator's estate, or all the testator's estate "except" what has been before given, the last-mentioned devise or bequest is residuary, and includes lapsed interests (*b*). In all such cases the question is whether the property is excepted in order to take it away under all circumstances and for all purposes from the person to whom the residue is given, or whether it is excepted merely for the purpose of giving it to somebody else. If the latter, and the gift to somebody else fails, the donees of all except this property, are entitled to take the whole (*c*).

include the subject of lapsed gifts.

It has been held that a devise of "the rest of my freehold lands" in a particular parish is not a residuary devise within the meaning of the Wills Act, and did not include the subject of a void devise in the same parish (*d*).

No lapse on death of tenant in tail, leaving inheritable issue,

The 32nd section of the Wills Act provides, that "where any person to whom any real estate shall be devised for an estate tail, or an estate in *quasi* entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary inten-

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(*b*) Cogswell *v.* Armstrong, 2 K. & J. 227; Bernard *v.* Minshull, 1 John. 276.

(*c*) Bernard *v.* Minshull, 1 John. 276, 299; see also Cambridge *v.* Rous, 8 Ves. 12, 25; Easum *v.* Appleford, 5 My. & Cr. 61, 62; Evans *v.* Jones, 2 Col. C. C. 516; Cogswell *v.* Armstrong, 2 K. & J. 227.

(*d*) Springett *v.* Jenings, L. R. 10 Eq. 488; *ib.* 6 Ch. A. 333.

or on death of devisee or legatee, being issue of testator, leaving issue.

tion shall appear by the will." And the 33rd section provides, that "where any person being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

Points decided with respect to 33rd section of Wills Act.

With regard to the construction of the 33rd section, the following points have been decided:—1. That it applies to appointments by will under a general power (*e*), but not to appointments under a power limited to particular objects (*f*). 2. That it applies to a case where the devisee or legatee is dead at the date of the will, leaving issue who survive the testator (*g*). 3. That it is not necessary, in order to prevent lapse, that the issue living at the decease of the testator should have been living when the legatee died. Thus, where a legacy was given to a daughter who died before the testatrix, leaving one child who also died before the testatrix, leaving a child who survived the testatrix, it was held that the legacy did not lapse (*h*). 4. That the section does not apply to gifts to a class (*i*). 5. That the section does not substitute for the deceased devisee or legatee the issue whose existence is the event or condition which prevents the lapse, but renders the subject of the gift the absolute property of the deceased devisee or legatee, and disposable by his will notwithstanding his death before the testator. Thus, if a child to whom a legacy is given makes a will containing a general or residuary bequest of his personal estate, and then dies

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(*e*) Eccles *v.* Cheyne, 2 K. & J. 676.

(*f*) Griffiths *v.* Gale, 12 Sim. 354.

(*g*) Wisden *v.* Wisden, 2 Sm. & Gif. 396.

(*h*) Parker, in the goods of, 31 L. J. Prob. 9.

(*i*) Browne *v.* Hammond, John. 210; Cruse *v.* Howell, 4 Drew. 215. See *In re* Chaplin's Trusts, 33 L. J. Ch. 183.

before the original testator leaving issue who survives such testator, the legacy goes to the residuary legatee under the child's will (*k*), and probate duty is payable in respect thereof (*l*). But in a case where property was bequeathed to a daughter who died in the lifetime of the testator, but whose child and husband survived him, it was held by V.-C. Kindersley that such property was not within a covenant to settle property coming to the daughter during coverture (*m*). This decision seems contrary to the principle established by *Johnson* v. *Johnson* (*n*); his Honour, however, stated that he considered it to be quite in accordance with that case.

No lapse on death of one of several joint tenants or of one of several members of a class.

A gift to several persons as joint tenants, or to a class of persons, does not come within the operation of the doctrine of lapse unless all such joint tenants, or all the members constituting the class, die before the testator, as the gift takes effect in favour of those who survive (*o*); and where an estate is devised, subject to the payment of a sum thereout, the sum charged does not lapse by the death of the devisee of the estate in the testator's life (*p*). And a gift to a class operates in favour of those capable of taking to the exclusion of those who are incapable (*q*).

Where a legacy is given to a person with a gift over if he dies before a given event, *e.g.*, before he attains twenty-one, and the legatee dies in the testator's lifetime, and *before* the given event, the bequest over will take effect; but if the legatee died in the testator's lifetime *after* the given event, the legacy lapses (*r*).

A contingent gift of

A gift of personal estate on a contingency, *e.g.*, to A. if

(*k*) Johnson *v.* Johnson, 3 Hare, 157.

(*l*) Exors. of Perry *v.* the Queen, L. R. 4 Exch. 27.

(*m*) Pearce *v.* Graham, 1 N. R. 507.

(*n*) *Ubi suprà.*

(*o*) 1 Jarm. on Wills, 341; Leigh *v.* Leigh, 23 L. J. Ch. 287.

(*p*) Oke *v.* Heath, 1 Ves. Sen. 135.

(*q*) *In re* Coleman and Jarrom, 4 Ch. D. 165.

(*r*) Walker *v.* Main, 1 J. & W. 1; Humphreys *v.* Howes, 1 R. & M. 639; Humberstone *v.* Stanton, 1 V. & B. 385. If a bequest of a sum is made to A. for life with remainder to B. to be paid to him at twenty-one, with a gift over in case of his death before the same shall become payable, and B. attains twenty-one, and dies before A., the legacy passes to the representatives of B. Walker *v.* Maine, *ubi suprà*; Jones *v.* Jones, 13 Sim. 561.

personal estate carries with it intermediate income, but a devise of real estate does not.

he attains twenty-one, carries with it the intermediate income (*s*); but a devise of real estate does not, and the intermediate rents go to the residuary devisee, and if there is no residuary devise, or if the devise in question is itself a residuary devise, to the heir-at-law (*t*). If, however, there is a devise and bequest of real and personal estate as a mixed fund, the testator shows an intention that the rule applicable to personal estate shall apply also to the real estate, and the intermediate rents will follow the *corpus* (*u*). In a case where residuary real estate was devised to the second and other sons of A. (who was living, and had only one son, B.), and their issue in tail, with remainder to B. for life and his issue in tail, and the residuary personal estate was given upon trust to lay it out on the purchase of real estate to be settled to the same uses, it was held that during the suspense of vesting, the intermediate rents of the real estate belonged to the heir-at-law, and the income of the personal estate (including the income arising from the investment of such income) was liable to be laid out in the purchase of land (*x*).

Where the real and personal estate is made a mixed fund the rule as to personalty applies to the real estate also.

VI. *For what period the vesting of property given by will may be postponed or income may be accumulated, having regard to the rule against perpetuities and the Thellusson Act.*

Rule against perpetuities.

When, after the passing of the statute of uses, springing or secondary uses and executory devises were admitted by the Courts as legal limitations, it became necessary in order to prevent land from becoming inalienable, to confine them within certain bounds. It has been, therefore, settled that the event on which an executory devise is to take effect must be such as, if it happens at all, will necessarily happen within the space

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(*s*) Green *v.* Ekins, 2 Atk. 473.

(*t*) Stephens *v.* Stephens, Ca. temp. Talbot, 228.

(*u*) Genery *v.* Fitzgerald, Jac. 468.

(*x*) Hodgson *v.* Bective, 1 H. & M. 376: 33 L. J. Ch. 601. See also Wade Gery *v.* Handley, 1 Ch. D. 653.

of a life or lives in being, and twenty-one years and some months over from the death of the testator (*y*). Thus, if lands are devised to A. in fee simple, with an executory devise over in case A. or any of his heirs shall do a particular act, the devise over is void. But if lands are devised to A. in tail, with an executory devise over in case A., or the heirs of his body, shall do a particular act, the executory devise is not void, because A. being tenant in tail can at any time bar the entail and the executory devise, so that the property is not in fact tied up, and consequently the rule is not transgressed (*z*).

Instances of application of rule to real estate.

Again, a devise to an unborn person for life, with remainder to the children of such unborn person, is void (*a*).

Devise to unborn person for life with remainder to children of such person.

The rule against perpetuities is equally applicable to gifts of personal estate. It is therefore necessary, in framing all such gifts, to take care that the absolute vesting of them is not postponed beyond the period allowed, viz., a life or lives in being and twenty-one years afterwards.

Rule extends to personalty.

Thus, if a legacy is given in trust for A. for life and after his death for all his children who shall attain twenty-two, the gift is void, because it is possible that A. may die leaving a child just born, and in such case nearly twenty-two years beyond the life of A. must, or *may*, happen before the legacy becomes absolutely vested (*b*).

Instances application of rule to personalty.

All limitations ulterior to or expectant on a devise, which is void for remoteness, are void also (*c*).

In exercising by will powers of appointment in favour of particular objects referred to in the power, it is necessary to bear in mind that the rule in question is to be applied as if the appointment was contained in the instrument creating the power (*d*).

How rule to be applied, where will exercises a special power.

Previously to the passing of the Act about to be men-

For what period

(*y*) Fearne on Cont. Remrs. 429; Cadell *v.* Palmer, 7 Bl. 202.

(*z*) See Butler's note to Co. Lit. 271 *b*. See also Heasman *v.* Pearse, L. R. 7 Ch. A. 275.

(*a*) Duke of Marlborough *v.* Earl Godolphin, 1 Ed. 404. See Knapping *v.* Tomlinson, 34 L. J. Ch. 3.

(*b*) Thomas *v.* Wilberforce, 31 Beav. 299.

(*c*) Jarm. on Wills, 283.

(*d*) 1 Sug. Pow. 474.

income might have been accumulated before Thellusson Act.

tioned, the income of property might be directed to be accumulated for the whole period permitted by the rule against perpetuities, as was decided in the great case *Thellusson* v. *Woodford* (*e*).

Provisions of Thellusson Act.

The 39 & 40 Geo. 3, c. 98 (commonly called the Thellusson Act), prohibits any disposition by deed, will, or otherwise of real or personal property, so that the rents, or produce thereof, shall be accumulated for any longer term than the life or lives of the grantor or settlor, *or* the term of twenty-one years from the death of the grantor, settlor, or testator, *or* during the minority or respective minorities of any person or persons who shall be living or *in ventre sa mère* at the time of the death of the settlor, or testator, *or* during the minority or respective minorities only of any person or persons, who, under the uses or trusts of the instrument directing such accumulation, would for the time being, if of full age, be entitled unto the rents, or annual produce so directed to be accumulated; and every direction to accumulate otherwise than as aforesaid is null and void, and the rents and produce so directed to be accumulated are to go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed (*f*). But it is provided that the Act shall not extend to any provision for payment of debts of any grantor, settlor, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements (*g*).

Direction to accumulate beyond the period allowed, is good *pro tanto*

If a testator directs income to be accumulated for a period exceeding the time allowed by the Act, the accumulation will be allowed *pro tanto*, and will be void only for the excess (*h*).

Whether Act applies to accumulation.

The question has sometimes arisen whether the Thellusson Act applies to cases where there is no express

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(*e*) 4 Ves. 227.

(*f*) Sec. 1.

(*g*) Sec. 2.

(*h*) Griffiths *v.* Vere, 9 Ves. 127.

trust for accumulation but there is in the will an executory devise of such a nature that accumulation becomes necessary during the suspense of vesting.

arising by operation of law.

In *Macdonald* v. *Bryce* (*k*) property was given to A. (the eldest son of B.), and on his death, under twenty-one, to the other sons of B. in succession, and failing them, to others. A. died under twenty-one, and B. had no other son, but was still living at the end of twenty-one years from the death of A. It was held by Lord Langdale, that the Thellusson Act prevented accumulation during the rest of B.'s life, and that the income during that period was undisposed of and passed to the testator's next of kin. This decision was disapproved of by Vice-Chancellor Shadwell in the case of *Elborne* v. *Goode* (*l*), on the ground that, in the opinion of the Vice-Chancellor, the Act does not apply to cases where the accumulation arises by operation of law, but only to cases where there is an express trust for accumulation. On the other hand, Lord Cranworth, in *Tench* v. *Cheese* (*m*), thought that if a testator directs that to be done which, as a necessary consequence, leads to an indefinite accumulation, he must, within the meaning of the Act, be taken to have directed accumulation (*n*).

Destination of income directed to be accumulated beyond period allowed.

It will be observed that the Act simply makes void the direction to accumulate, and leaves the rents to go to such person, &c., as would have been entitled thereto if such accumulation had not been directed. Where, then, a residue is given upon trust to accumulate the income for the life of A., or any other period, such income will, after the expiration of the twenty-one years and during the rest of the period of accumulation directed by the will, go to the next of kin or heir-at-law of the testator, according to the nature of the property (*o*). But, in a case where a testator directed the rents of an estate to be accumulated until a certain sum was raised, and subject to such direction the estate was devised to several per-

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(*k*) 2 Keen, 276.

(*l*) 14 Sim. 165.

(*m*) 6 De G. M. & G. 453.

(*n*) See also Morgan *v.* Morgan, 4 De G. & Sm. 164; Mathews *v.* Keble, L. R. 4 Eq. 467.

(*o*) Eyre *v.* Marsdon, 2 Keen, 276; Macdonald *v.* Bryce, *ubi suprà.* See also Smith *v.* Lomas, 33 L. J. Ch. 579; Green *v.* Gascoyne, 34 L. J. Ch. 268.

sons in succession, it was held that the direction to accumulate operated as a charge on the successive estates, and that accumulations made after twenty-one years from the testator's death belonged not to his heir-at-law, but to the persons entitled to the rents and profits under the devise (*p*).

What is a provision for raising portions within the Act.

The 2nd section of the Act has given rise to much litigation, particularly with regard to the question, what is a *provision for raising portions*, &c., within the second exception in that section. In *Barrington* v. *Liddell* (*q*), family estates were settled upon the marriage of A. to the use of himself for life, with remainders over, including a term for raising portions for his younger children, amounting, in the events which happened, to £40,000. A great uncle of A., by his will, after making a provision for A., gave £15,000 to trustees on trust to invest it and accumulate the income during the life of A., and after his death to apply the accumulations in satisfaction of the portions and in exoneration of the settled estates. It was held by Lord St. Leonards that the case was within the exception of the 2nd section, and that the trust for accumulation was consequently good beyond the twenty-one years. His Lordship considered that, by the terms of the first exception in the 2nd section, a grantor, &c., may make provision for the payment not only of his own debts but of the debts of any other person, and that the provision for raising portions for any child, &c., mentioned in the 2nd exception, includes portions already created, and enables a grantor, &c., to make the same provision for the children of other persons as for his own, except that, as to the former, they must be the children of persons who take an interest under such conveyance, settlement or devise, as is referred to in the clause. He also considered that the words "such conveyance, settlement, or devise," relate to the instrument by which the grantor, &c., has made a provision for raising portions, but it is not necessary that the gift to the parent should be in the very clause of the will which creates the pro-

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(*p*) *In re* Clulow's Trust, 1 J. & H. 639

(*q*) 2 De G. M. & G. 480.

vision for the children, or that it should be an interest in the very property directed to be accumulated.

A direction to accumulate the residue of a testator's estate for the benefit of an infant child is not a provision for raising portions for such child within the meaning of the exception in the Act (*r*); and it has been held by Kindersley, V.-C., that a legacy to a parent for life, and after his decease to his children, is not a provision for raising portions (*s*) but Vice-Chancellor Stuart, in another case (*t*), held the contrary, thinking that in so doing he was following *Barrington* v. *Liddell* (*u*).

As to the validity of accumulations to pay debts.

A direction to accumulate rents and profits for an indefinite period for the purpose of paying debts, with a devise of the land (subject to such trust) to uses in strict settlement, does not contravene the rule against perpetuities, because, so soon as the fee simple vests in possession under the limitations, the owner can put an end to the accumulations (*x*), and a trust of this nature is excepted by the 2nd section from the operation of the Thellusson Act. But it was held in a recent case, that if the creditor insists on and obtains payment at once out of the *corpus* of the estate, under a decree in an administration suit or otherwise, the tenant in remainder cannot require the accumulation to go on so as to recoup the *corpus* out of the income of the remaining property, and the V.-C. intimated his opinion that if the will had contained a clause expressly directing such recouping, the clause would have been void (*y*).

What is a provision for paymen of debts within the Act.

A contingent liability, under a covenant entered into by the testator, is a debt within the meaning of the exception in the 2nd section, and may be provided for by a direction to create a sinking fund without any reference to the period of accumulation allowed by the Act (*z*).

(*r*) Edwards *v.* Tuck, 3 De G. M. & G. 40; Bourne *v.* Buckton, 2 Sim. N. S. 91; see also Drewett *v.* Pollard, 27 Beav. 196; Jones *v.* Maggs, 9 Hare, 605.

(*s*) Watt *v.* Wood, 2 Drew. & Sm. 56.

(*t*) Middleton *v.* Losh, 1 S. & G. 66.

(*u*) *Ubi suprà.*

(*x*) Bateman *v.* Hotchkin, 10 Beav. 426.

(*y*) Tewart *v.* Lawson, L. R. 18 Eq. 490.

(*z*) Varlo *v.* Faden, 27 Beav. 255; s.c. 1 De G. F. & J. 211.

VII. *Gifts in mortmain, and particularly gifts to charities.*

Corporation cannot hold land, without licence.

Every devise of land to a corporation was void under the old law, unless such corporation was authorized to hold land in mortmain by licence from the Crown or Act of Parliament. But since the Wills Act a corporation would be able to take land, but not to hold it, without a licence (*a*).

Gifts of land for charitable purposes must be by deed enrolled in chancery, and without power of revocation.

Under the 9 Geo. 2, c. 36, sects. 1 and 2, any conveyance, settlement, or gift of land, or of any interest therein, or of any incumbrance affecting land, or of any moneys to be laid out in or to be raised by the sale of land, for any charitable purpose, must be made by deed sealed and delivered in the presence of two witnesses, and must be enrolled in Chancery within six months after its execution (*b*), and such conveyance, &c., must be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, or limitation for the benefit of the donor or grantor (*c*). And if the conveyance, &c., is not made

Donor must live for a

(*a*) 1 Jarm. on Wills, 65.

(*b*) When lands are in mortmain, on subsequent dealings with the property the deeds need not be enrolled. (Ashton *v.* Jones, 6 Jur. N. S. 970.)

(*c*) The object of the 9 Geo. 2, c. 36, was to prevent a reservation of some substantial benefit to the donor himself. Therefore, a trust or condition for the keeping up a tomb for the grantor and his family is not a reservation within the meaning of the Act. (Doe d. Thompson *v.* Pitcher; 3 Mau. & Sel. 407.) And in a case where a person who had erected a chapel conveyed it to trustees for charitable purposes, it was held that the reservation of a power to the grantor during his life to appoint the ministers and to make any further regulations for the better management of the charity was good, for the powers were not reservations for the benefit of the grantor (Grieves *v.* Case, 2 Cox, 301).

The 24 Vict. c. 9, contains certain provisions remedying certain defects, and meeting certain difficulties in reference to past assurances of hereditaments for charitable uses, and also provides that no future assurance for charitable uses shall be rendered void by reason of the deed not being indented, or of its containing any grant or reservation of a nominal rent, or of mines or any covenants or provisions for the erection or repair of buildings, the formation or repair of streets, &c., or for the use and enjoyment as well of the hereditaments comprised in such assurance as of any other neighbouring hereditaments, or any right of entry on non-payment of such rent, or on for a valuable consideration, the death of the donor within twelve calendar months after the execution of the deed renders it void. The consideration referred to in the 2nd section must be paid by the person for whose benefit the conveyance is made (*d*).

year after execution.

Exception in favour of Universities.

But the Act makes an exception as to gifts in favour of the two English Universities, and the colleges of Eton, Winchester, and Westminster, for the support and maintenance of the scholars only upon the foundation, and it does not extend to Scotland (*e*). And other partial exceptions have been made by various Acts of Parliament.

It is evident that under the provisions of the above Act every testamentary disposition of land for a charitable use is void (*f*).

Instances of void bequests under Act.

A bequest of money secured on turnpike tolls (*g*), or on the poor and county rates (*h*), or of the lien of a vendor for his purchase-money (*i*), or of money due on mortgage of land, or of interest on such money (*k*) including an equitable mortgage by deposit of deeds (*l*), or of the proceeds of growing crops (*m*), is void. On the other hand, shares in gas, canal, or railway or other companies possessing land for the purposes of their

Instances of valid bequests.

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breach of any such covenants or provisions, or any stipulations of the like nature for the benefit of the grantor, nor (in case of the assurance of copyhold) by reason of the same not being made by deed, nor in the case of such assurances made *bonâ fide* on a sale for a valuable consideration, by reason of such consideration consisting wholly or in part of a rent-charge or other annual payment reserved to the vendor or any other person with or without a right of re-entry for non-payment thereof, so that in all such reservations the same benefits shall be reserved for the representatives of the grantor as for himself (sect. 1). And the 27 Vict. c. 13, s. 4, enacts that every full and *bonâ fide* valuable consideration which shall consist wholly or partly of a rent or other annual payment reserved or made payable to the vendor or grantor, or to any other person, shall, for the purposes of the Mortmain Act, be as valid and have the same force and effect as if such consideration had been a sum of money paid at or before the making of such conveyance without fraud or collusion. See also 25 & 26 Vict. c. 17.

(*d*) Doe d. Preece *v.* Howells, 2 B. & Ad. 744.

(*e*) Sects. 4, 6.

(*f*) Paice *v.* Archbishop of Canterbury, 14 Ves. 364; Attorney-General *v.* Weymouth, 1 Ambl. 20.

(*g*) Knapp *v.* Williams, 4 Ves. 430, n.

(*h*) Finch *v.* Squire, 10 Ves. 41.

(*i*) Harrison *v.* Harrison, 1 Russ. & Myl. 71.

(*k*) White *v.* Evans, 4 Ves. 21.

(*l*) Waterhouse *v.* Holmes, 2 Sim. 162.

(*m*) Symons *v.* Marine Society, 2 Giff. 325.

undertaking (*n*), including mining companies conducted on the cost book principle, are not interests in land within the meaning of the Mortmain Act, whether the particular Act incorporating the company does or does not contain a clause providing that the shares shall be personal estate, the test being, whether the share can, under any ordinary state of circumstances, result to the holder in the shape of land, and there is no difference in this respect between debenture stock and ordinary stock or shares.

Debentures.

Whether the debentures of railway and other companies, as distinguished from their stock or shares, are within the Act has been the subject of conflicting decisions. The balance of authority is against any such distinction, and that a debenture like a share is not an interest in land so as to be within the Act (*q*).

Policies of assurance.

Again, policies of assurance by which the directors engage "to pay out of the funds," or "that the funds shall be liable," or "that a share of the funds shall be paid," are not so connected with land as to render a testamentary gift of them to a charity invalid, although the assets of the assurance company may consist partly of real estate (*r*).

But in the case of private partnership, the interest of a deceased partner in land forming part of the partnership property is within the Act (*s*).

Interest of testator in proceeds of real estate.

The question has often arisen whether the interest of a testator in the proceeds of real estate directed to be sold by the will of a former testator, but which in fact remains unsold at the death of the second testator is to be considered an interest in land within the meaning of the Mortmain Act. It seems to be now settled that it is to be so treated, whether the second testator was entitled to the whole proceeds or only to a share therein or to a legacy payable thereout, and if the legacy

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(*n*) Myers *v.* Perigal, 2 De G. M. & G. 599; Edwards *v.* Hall, 11 Hare, 13; 6 De G. M. & G. 74; see also Taylor *v.* Linley, 2 De G. F. & J. 84; Hayter *v.* Tucker, 4 K. & J. 243; Entwistle *v.* Davis, L. R. 4 Eq. 272.

(*q*) Holdsworth *v.* Davenport, 3 Ch. D. 185; *Re* Mitchell, 6 Ch. D. 655; Attree *v.* Hawe, 9 Ch. D. 337.

(*r*) March *v.* Attorney-General, 5 Beav. 433.

(*s*) Ashworth *v.* Munn, 15 Ch. D. 363.

payable thereout is payable also out of the personal estate of the first testator, there will be no apportionment (*t*).

A debt secured by covenant may be bequeathed to a charity, even though the debt may remain unpaid at the death of the covenantor, and has to be paid out of his real estate, his personalty being insufficient (*tt*). But a covenant to leave money to a charity must be treated as a legacy, and is void in the proportion which the impure bears to the pure personalty (*ttt*).

Gift to a charity to be applied in building void, unless on land already in mortmain.

A gift of money to a charity to be applied in building is *primâ facie* void, as involving the purchase of land for a site (*u*).

But there is no objection to a bequest of money for the erection or repair of buildings on land already in mortmain (*v*), or for the endowment of churches or chapels in existence (*x*). Where there is land already in mortmain on which the buildings can be erected, it is sometimes difficult to ascertain whether a testator has sufficiently pointed to such land so as to render the gift good. In a case where a legacy was given to build a parsonage-house, and it appeared that there was glebe on which it could be erected, the gift was held good (*y*). In another case a gift of money to the trustees of a Wesleyan chapel to be applied towards the erection of a new chapel was held valid, there being land duly vested in the trustees at the date of the will on which a new chapel could be built (*z*); but in a similar case, the contrary was decided by another judge, on

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(*t*) Brook *v.* Badley, 3 Ch. A. 672; Cadbury *v.* Smith, *ib.* 9 Eq. 37. The cases of Shadbolt *v.* Thornton, 17 Sim. 49, and March *v.* Attorney-General, 2 J. & H. 61, are apparently overruled.

(*tt*) *Re* Robson, 19 Ch. D. 156.

(*ttt*) Fox *v.* Lowndes, L. R. 19 Eq. 453.

(*u*) Attorney-General *v.* Hyde, 2 Ambl. 750; Attorney-General *v.* Nash, 3 B. C. C. 588; Trye *v.* Corporation of Gloucester, 14 Beav. 173; Pritchard *v.* Arbouin, 3 Russ. 456; Giblett *v.* Hobson, 5 Sim. 651; 3 M. & K. 517.

(*v*) Attorney-General *v.* Davies, 9 Ves. 535; Attorney-General *v.* Munby, 1 Mer. 327; Attorney-General *v.* Chester, 1 Bro. C. C. 444; Fisher *v.* Brierly, 1 De G. F. & J. 643; *In re* Hawkins, 34 L. J. Ch. 80.

(*x*) Edwards *v.* Hall, *ubi suprà.*

(*y*) Sewell *v.* Crewe Read, L. R. 3 Eq. 60. See also Cresswell *v.* Cresswell, *ib.* 6 Eq. 69.

(*z*) Booth *v.* Carter, L. R. 3 Eq. 757.

the ground that such land was not distinctly pointed out (*a*).

Gifts to "establish" a charity, when valid.

The validity of a gift of money to "establish" a charity seems to depend on whether the charity can be established without the purchase of land. Thus in *Attorney-General* v. *Williams* (*b*), a gift of personalty to establish a school was held good, because the master might teach in his own house or in the church; and in *Hartshorne* v. *Nicholson* (*c*), a similar bequest was supported on the ground that a school might be established by hiring a room for the purpose. But in the case of *Attorney-General* v. *Hull* (*d*), a similar bequest was held to be void, because, taking the whole of the will together, the Court thought it was clearly the intention of the testator that land should be purchased (*e*). And in other cases, gifts to establish an hospital (*f*) or slaughter-houses (*g*) have been held void.

To render charitable gifts void, it is not sufficient that trustees *may* apply it illegally.

In order to render a gift invalid under the statute, it is not sufficient that the trustees *may* consistently with their trust apply the fund in a manner which would be illegal: the question in every case is, whether they *must* do so (*h*), for where trustees have a discretion to apply the money either in a way which the law allows, or in one which the law disallows, the presumption ought to be that the discretion will be exercised in the former mode (*i*).

Bequest good, if trustees have an option to lay out in land, or other investments.

Thus, if the trustees have an *option* to lay out the money in land *or* in investments not savouring of realty, the bequest would be good (*k*). And in a case where a sum of money was bequeathed to the mayor and jurats of a town to be laid out by them in such manner as they should think proper for the benefit and ornament of the

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(*a*) *In re* Watmough's Trusts, L. R. 8 Eq. 272. *Re* Cox, 7 C. D. 204.

(*b*) 4 B. C. C. 526.

(*c*) 26 Beav. 59.

(*d*) 9 Hare, 647.

(*e*) See also Dunn *v.* Bownas, 1 K. & J. 596; Hopkins *v.* Philips, 7 Jur. N.S. 1274; Tatham *v.* Drummond, 34 L. J. Ch. 1.

(*f*) Dunn *v.* Bownas, 1 K. & J. 596.

(*g*) Tatham *v.* Drummond, 34 L. J. Ch. 1.

(*h*) Carter *v.* Green, 3 K. & J. 591.

(*i*) Mayor of Faversham *v.* Ryder, 5 De G. M. & G. 350.

(*k*) Curtis *v.* Hutton, 14 Ves. 537; Soresby *v.* Hollins, 9 Mod. 221; Grimmett *v.* Grimmett, 1 Ambl. 211; Dent *v.* Allcroft, 30 Beav. 335.

town, the gift was supported although the discretion of the trustees *might* extend to the application of the fund in violation of the statute (*l*). And on the same principle a bequest of money to be applied in aid of erecting *or* endowing a church has been held good (*m*).

Bequest for building on condition that a site is provided, whether valid.

A bequest of money to a charitable society for building almshouses on condition that the society will procure lands for a site, is *in effect* a bequest for the purchase of land, and therefore void (*n*); but a bequest of money to be applied in erecting an almshouse provided that some person shall within a limited time give a piece of land as a site is good; and it is not a sufficient objection to a gift to a charity that its tendency is to bring lands into mortmain (*o*). And a bequest for the endowment of a future church, or to build almshouses as soon as land should be given for the purpose is a valid bequest, and the Court will direct an enquiry whether the fund can be applied for the purpose (*p*).

Assets not marshalled in favour of a charity.

If a testator bequeaths a general legacy to a charity without specifying the fund out of which it is to be paid, the Court will not marshal the assets in favour of such legacy, but such proportion of the legacy would fail as the prohibited portion of the testator's property bears to the *pure* personalty (*q*).

To whom the subject of a void charitable gift goes.

If land is directed to be sold for the benefit of a charity, and the gift is illegal, the land goes to the heir-at-law or the residuary devisee (*r*). If the bequest be of money to be laid out in land, the legacy fails in favour of the next of kin and not of the heir (*s*).

What constitutes a

In order to constitute a secret trust for a charity as to

(*l*) Mayor of Faversham *v.* Ryder, 5 De G. M. & G. 350.

(*m*) Sinnett *v.* Herbert, L. R. 7 Ch. 232.

(*n*) Attorney-General *v.* Davies, 9 Ves. 535.

(*o*) Philpot *v.* St. George's Hospital, 5 H. of L. Ca. 338. This case seems virtually to overrule Trye *v.* Corporation of Gloucester, 14 Beav. 173, so far at all events as to the principles on which the Master of the Rolls in the latter case grounded his decision; see also Cawood *v.* Thompson, 22 L. J. Ch. 835.

(*p*) Sinnett *v.* Herbert, L. R. 7 Ch. 232; Chamberlayne *v.* Brockett, *ib.* 8 Ch. 206; Littledale *v.* Bickersteth, W. N. 1876, p. 32.

(*q*) Williams *v.* Kershaw, 1 Keen, 274, n.; Robinson *v.* Geldard, 3 Mac. & Gor. 735.

(*r*) Attorney-General *v.* Lord Weymouth, Ambl. 20.

(*s*) Cogan *v.* Stephens, 1 Beav. 482, n.

secret trust for a charity.

property given by will so as to render it void, there must have been in the lifetime of the testator an express or implied promise or assent on the part of the legatee to carry out the testator's intention (*t*).

What are charitable funds.

All funds given by a private person for any legal, public, or general purpose are to be considered charitable funds (*u*). Thus, a gift to the Royal Geographical Society is a charitable gift (*x*), but a deed of conveyance of land to trustees for the purpose of building a workhouse has been held not to be within the Statute of Mortmain, on the ground that the conveyance was made under an Act of Parliament, which enabled the grantee to sell again, and therefore there was no permanent dedication to a charitable use (*y*).

Trust to repair a tomb in the churchyard is not charitable.

A trust or direction to keep in repair a family tomb in the churchyard is not a charitable purpose, and is therefore not forbidden by the Mortmain Act (*z*). But if such a trust transgresses the rule against perpetuities, it is void on that account (*a*).

Secus, if in the church.

A trust for the perpetual repair of a monument in the church itself, is a charitable trust, and within the Mortmain Act, and if of pure personalty, is good (*b*).

When, by a private Act of Parliament, a charitable institution was incorporated and empowered to purchase, take in reserve, and hold any lands not exceeding a certain quantity without incurring any of the penalties of the Statute of Mortmain, it was held that the charity could not take a bequest of land by will (*c*), but the contrary was held in another case where the incorporating Act expressly authorized the charity to acquire lands by will (*d*).

(*t*) Lomax *v.* Ripley, 24 L. J. Ch. 254; Wallgrave *v.* Tebbs, 2 K. & J. 313; Tee *v.* Ferris, 2 K. & J. 357; see also Moss *v.* Cooper, 1 J. & H. 352; Jones *v.* Badley, L. R. 3 Ch. 362.

(*u*) Leach, Sir J., in Attorney-General *v.* Heelis, 2 S. & S. 76.

(*x*) Beaumont *v.* Oliveira, L. R. 6 Eq. 534.

(*y*) Barnaby *v.* Bardsley, 4 H. & N. 690; 28 L. J. Ex. 326.

(*z*) Lloyd *v.* Lloyd, 2 Sim. N. S. 255.

(*a*) Lloyd *v.* Lloyd, *ubi suprà*; Rickard *v.* Robson, 31 Beav. 244; Thomson *v.* Shakespeare, John. 612; 1 De G. F. & J. 399; Fowler *v.* Fowler, 33 Beav. 616; Dawson *v.* Small, 18 Eq. 114.

(*b*) Hoare *v.* Osborne, 1 L. R. Eq. 585.

(*c*) Nethersole *v.* School for Indigent Blind, L. R. 11 Eq. 1; Chester *v.* Chester, *ib.* 12 Eq. 444.

(*d*) Perring *v.* Trail, L. R. 18 Eq. 88. See Luckraft *v.* Pridham, 6 Ch. D. 205.

By a recent Act (*dd*), trustees of charitable funds are authorized to invest on real securities without infringing the Statute of Mortmain, subject to a proviso that where the equity of redemption in the property comprised in any such security becomes liable to foreclosure, the property is to be sold. It is conceived that this Act does not authorize a bequest to a charity of money invested on real security at the testator's death.

Recent Act enabling charitable funds to be invested in real securities.

VIII. *Conversion.*

Where a testator gives his personal estate or the residue of his personal estate in general terms to A. for life, with remainder over, the trustees are bound to convert into money all such property as is of a perishable or wasting nature, such as leaseholds, long annuities, &c.; the principle being that it is *primâ facie* to be presumed that a testator intends that the same property which is given to the tenant for life shall go to those in remainder, and in order to effect such intention, wasting property must be turned into permanent property (*e*). But if it appear from the context of the will that the testator intended that the tenant for life should enjoy the property in *specie*, such indication of intention takes the case out of the general rule. Whether such an intention sufficiently appears is frequently a difficult question. A direction out of the rents to renew leaseholds and keep houses in repair (*f*); a trust to sell the property on the decease of the tenant for life (*g*), or only in a given event (*h*); a direction not to sell without the consent of all parties (*i*), and a power to trustees to retain any portion of the testator's property in the same state in which the same shall be at his death, or to sell and con-

Rule as to conversion with regard to perishable property.

Instances where it has been held that leaseholds, &c. shall be enjoyed in specie

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(*dd*) 33 & 34 Vict. c. 34.

(*e*) Howe *v.* Earl of Dartmouth, 7 Ves. 137.

(*f*) Crowe *v.* Crisford, 17 Beav. 507.

(*g*) Alcock *v.* Sloper, 2 M. & K. 699.

(*h*) Daniel *v.* Warren, 2 Y. & C. C. C. 290.

(*i*) Hinves *v.* Hinves, 3 Hare, 609; see also Burton *v.* Mount, 2 De G. & Sm. 383.

vert the same (*k*), have been held sufficient evidence of the testator's intention that leaseholds should or might be enjoyed in *specie.* In some cases, again, where the gift of the residue has been distinguished by a mention of particular parts of the testator's property, or where the property has been pointed to specifically in the gift over, a similar intention has been inferred as to the property so specified (*l*).

A bequest of *rents* to tenant for life, whether sufficient to entitle him to enjoy in specie.

In *Pickup* v. *Atkinson* (*m*) it was held that a bequest of the *rents*, profits, dividends, and interests of the residue in general terms to the tenant for life, was not of itself sufficient to entitle him to enjoy leaseholds in *specie*, but in other cases the contrary seems to have been decided (*n*).

Rule as to conversion applies to all the personal estate not consisting of authorized investments.

Perishable and wearing out property in the strict sense of the term is not, however, the only property to which the rule as to conversion applies. Where a testator bequeaths the residue of his personal estate to several persons in succession, it is the duty of the executors to convert the whole of such estate not consisting of investments authorized by the will or recognised by the Court of Chancery as of a permanent nature. Until lately the only investments so recognised were £3 per Cent. Annuities and approved real securities (*o*), but by the joint operation of the 22 & 23 Vict. c. 35, sect. 32, 23 & 24 Vict. c. 38, sects. 10 and 11, and 30 & 31 Vict. c. 132, and the Order in Chancery of the 1st February, 1861 (*p*), Bank Stock, East India Stock and certain other securities are now placed for trust purposes on the same

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(*k*) Gray *v.* Siggers, 15 Ch. D. 74.

(*l*) Bethune *v.* Kennedy, 1 M. & C. 114; Vaughan *v.* Buck, 1 Ph. 75; Blann v. Bell, 21 L. J. Ch. 811; Bowden *v.* Bowden, 17 Sim. 65; Collins *v.* Collins, 2 M. & K. 703; Harris *v.* Poyner, 1 Drew. 174; Simpson *v.* Leicester, 4 Jur. N. S. 1269.

(*m*) 4 Hare, 624.

(*n*) Goodenough *v.* Tremamondo, 2 Beav. 512; Crowe *v.* Crisford, 17 Beav. 509; Wearing *v.* Wearing, 23 Beav. 99. And see generally on this subject, in addition to the cases already cited, Sutherland *v.* Cooke, 1 Col. C. C. 498; Mills *v.* Mills, 7 Sim. 501; Morgan *v.* Morgan, 14 Beav. 72; Hood *v.* Clapham, 19 Beav. 90; Hubbard *v.* Young, 10 Beav. 203; Thornton *v.* Ellis, 15 Beav. 193; Jebb *v.* Tugwell, 20 Beav. 84; Skirving *v.* Williams, 24 Beav. 275; Chambers *v.* Chambers, 15 Sim. 183; Boys *v.* Boys, 28 Beav. 436; Vachell *v.* Roberts, 32 Beav. 140.

(*o*) Howe *v.* Earl of Dartmouth, *ubi suprà.*

(*p*) See *suprà*, p. 146.

footing as £3 per Cent. Annuities, and an executor may therefore, in the absence of any contrary direction in the will, retain unconverted such part of the testator's estate as may consist of any of the investments thus authorized by statute (*q*).

Liability of executors who neglect to convert.

Executors are allowed a year from the testator's death for the realising of his property, and the conversion of such part as ought to be converted. If they neglect this duty and any loss arises, their liability is as follows: If by the terms of their trust they are authorized to invest in real as well as in government securities, they are liable for the money which would have been produced by a conversion at the end of a year from the testator's death, with interest at 4 per cent. (*r*). If by the terms of the will the trustees are bound to invest in the 3 per Cents. only, they are liable for the amount of 3 per Cents. which would have been produced by a conversion and investment at the end of such first year, together with interest at 3 per cent. on the same amount from that time (*s*). And in the application of the above principle, it is conceived that the statutory powers of investment must now be taken into account, so that an executor will be considered as having a right to invest on real securities in all cases in which he is not expressly forbidden to do so.

Mode of adjusting accounts between tenant for life and

If a gain arises from the neglect to convert at the proper time, the *cestuis que trust* are entitled to such gain, and where there is a tenant for life and remainder-

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(*q*) Hume *v.* Richardson, 31 Law J. Ch. 713.

(*r*) Robinson *v.* Robinson, 1 De G. M. & G. 247. This case at first sight seems to conflict with Dimes *v.* Scott, *ubi infrà.* In the latter case the trustees were authorized to invest in government or real securities, and it was nevertheless held that a conversion into the 3 per Cents. must be supposed, and that the tenant for life was entitled to interest on that footing only. But the point was now argued, for according to the price of Consols at that time the tenant for life would get more than 4 per cent. by the plan which was followed. (See note to Brown *v.* Gellatly, 2 L. R. C. A. 756.) Brown *v.* Gellatly also seems at first sight to be contrary to Robinson *v.* Robinson, but this is not really the case, if (as may be gathered from the reported judgment of Cairns, L.J.) the question decided as to the unauthorized investment, was confined to the rate of interest to be allowed to the tenant for life during the first year after the testator's death.

(*s*) Dimes *v.* Scott, 4 Russ. 195.

remainderman, where conversion had not been made.

man of the residuary estate their respective rights are thus adjusted; the tenant for life receives such interest only as he would have received if the conversion and investment had been made at the end of the first year, *viz.*, 4 per cent. on the principal money, which would have been produced by such conversion, where an investment in real security is permitted; and 3 per cent. on the stock which such money would have purchased, where the terms of the will require an investment in 3 per Cent. stock; and the excess of income actually produced by the unconverted fund is added to the *corpus*, and with such *corpus* belongs to the remainderman (*t*).

Right of tenant for life of residue during first year.

It was for some time unsettled what was the right of the tenant for life of the residue during the first year from the testator's death, and after several conflicting decisions the point has been thus settled, *viz.*, that the tenant for life is entitled, during such first year, as well as afterwards, to the whole income derived from such part of the testator's estate as is properly invested (*u*), but that as to such part of the estate as is not so invested he is entitled during the first year to an annual sum equal to 3 per cent. on the stock which would have been purchased with the unconverted property if such conversion had been made at the end of the year, and the excess of income accruing from the unconverted property is to be deemed *corpus* (*x*). The following exception has, however, been made, *viz.*, that if the property is so circumstanced as that it is producing a large annual income, and is secure, but cannot be immediately converted without a loss to the estate, then a value in money will be set upon it, and the tenant for life will be allowed 4 per cent. on such value from the testator's death, the

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(*t*) Dimes *v.* Scott, 4 Russ. 195; Brown *v.* Gellatly, 2 L. R. Ch. App. 752.

(*u*) Angerstein *v.* Martin, T. & R. 232; Hewitt *v.* Morris, T. & R. 241; Taylor *v.* Clark, 1 Hare, 161.

(*x*) Dimes *v.* Scott, 4 Russ. 195; Taylor *v.* Clark, 1 Hare, 161; Morgan *v.* Morgan, 14 Beav. 72; Brown *v.* Gellatly, 2 L. R. Ch. App. 752. The cases of Douglas *v.* Congreve, 1 Keen, 410, and La Terriere *v.* Bulmer, 2 Sim. 18, must be considered as overruled, so far as they are not in accordance with the principle stated in the text.

excess of income beyond 4 per cent. being treated as *corpus* (*y*).

Application of rule to reversionary property.

The rule as to conversion is to be applied for the benefit of as well as against the tenant for life, and consequently extends to any part of the testator's estate which may be reversionary. If executors in the exercise of their discretion think that a loss will arise by a conversion of reversionary property, and consequently wait until it falls into possession, their doing so will not be allowed to prejudice the tenant for life, and the Court will direct a value to be set upon such reversion at the end of the first year, and will give to the tenant for life the difference between the fund actually received and the value of the reversion as so ascertained (*z*).

Tenant for life not entitled to interim income of funds applied in payment of legacies.

It will be borne in mind that the tenant for life of a residue is entitled to the income of such residue only and not to the income which may accrue on such part of the testator's estate as is applied in payment of legacies during the period which may intervene between the death of the testator and the actual payment of such legacies. Thus, in a case where a testator gave £16,000 in legacies, and then gave the residue of his personal estate to his wife for life with remainders over, and all his estate was in Consols at his death, it was held that the income which accrued after the testator's death and before the payment of the legacies on so much of the fund as was applied in payment of such legacies did not belong to the tenant for life, but formed part of the *corpus* of the residue (*a*); and in another case it was held that where a testator bequeaths legacies, and gives his residue to a tenant for life, with remainder over, executors, though as between themselves and the persons interested in the residue they are at liberty to have recourse to any funds they please in order to pay debts and legacies, yet will be treated by the Court in adjusting accounts between the tenant for life and remainder-

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(*y*) Gibson *v.* Bott, 7 Ves. 89; Caldecott *v.* Caldecott, 1 Y. & C. C. C. 312; Meyer *v.* Simonsen, 5 De G. & Sm. 723; *In re* Llewellyn's Trust, 29 Beav. 171; Brown *v.* Gellatly, *ubi suprà.*

(*z*) Wilkinson *v.* Duncan, 23 Beav. 469.

(*a*) Holgate *v.* Jennings, 24 Beav. 623.

man, as having paid the debts and legacies not out of capital only, but with such portion of the capital as together with the income of that portion for one year was sufficient for the purpose (*b*).

Direction as to application of income desirable.

In order to prevent any question arising out of the doctrine above discussed, every will by which a residue is given upon trusts for sale and conversion, should expressly authorize the trustee to postpone such sale and conversion, and should direct that the rents and income arising from the unconverted property shall, from the testator's death, go to the same persons and in the same manner as the income of the proceeds of the conversion thereof would be applicable if such conversion had been made (*c*).

Destination of moneys arising from land directed to be sold.

If real estate is directed to be sold, and the proceeds of sale are absolutely bequeathed, the property from that time acquires the character of personalty, and in the event of the death of a legatee before a sale, the proceeds would belong to his personal representatives. On the other hand, moneys which are directed to be laid out in the purchase of land, from the creation of the trust assume the character of real estate, and devolve as such on the real representatives of the devisee, whether he dies before the conversion or afterwards.

Election to take estate.

At any time before conversion the legatee or devisee, if *sui juris* and absolutely beneficially interested, may elect to take the property directed to be converted in its actual state; but such election must be unequivocal, and must be shown by acts indicating a clear intention to deal with the property as discharged from the trusts for conversion (*d*).

Heir not disinherited as to interests not disposed of.

When real estate is directed to be converted, and the whole of the proceeds of sale are not absolutely disposed of, or the disposition thereof wholly or partially fails by lapse or otherwise, a question sometimes arises as to the

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(*b*) Allhusen *v.* Whittell, 4 L. R. Eq. 295; Lambert *v.* Lambert, L. R. 16 Eq. 320. The rule established in the first case applies to real estate: Marshall *v.* Crowther, 2 Ch. D. 199.

(*c*) See Wrey *v.* Smith, 14 Sim. 202; Scholfield *v.* Redfern, 2 Drew. & Sm. 173.

(*d*) Crabtree *v.* Bramble, 3 Atk. 680; Seely *v.* Jajo, 1 P. W. 389; Mutlow *v.* Bigg, 1 Ch. D. 385.

relative rights of the heir-at-law and the personal representatives of the testator. It is clear that the heir is not disinherited by the direction to convert, unless the whole beneficial interest in the proceeds of sale is in the event absolutely disposed of; so far, therefore, as the beneficial interest is either directly or indirectly undisposed of, or becomes so by subsequent events the undisposed of interest belongs to the heir, and not to the next of kin (*e*); but if after the failure of the disposition the heir dies, his personal representatives and not his heir are entitled to the undisposed of proceeds (*f*). The principle is clear—the trust for conversion is created for the benefit of the legatees, and not for the next of kin, so that there is no ground for depriving the heir-at-law of the undisposed of interest, simply because, under the trust for the particular purposes of the will, a sale may have taken place. In *Taylor* v. *Taylor* (*g*), a testator directed his real estate to be sold, and the proceeds to go as his personal estate, and he bequeathed all the residue of his personal estate (including the proceeds of sale) on trusts for his children equally; one of the children died, and it was held that that child's lapsed share in the proceeds should go to the heir-at-law of the testator.

IX. *In what cases precatory words create a trust.*

Trusts raised by words of recommendation, &c.

A testator not uncommonly associates an absolute gift or devise with words of "recommendation," "hope," "request," or other terms of a precatory character, which raise the important question whether he intended to impose a trust on the devisee, and often, it is apprehended, the Court has been obliged to decide that

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(*e*) Eyre *v.* Marsden, 2 Keen, 574; 1 Jar. on Wills, 619 *et seq.* If, however, real estate is settled by *deed* upon trust to sell for certain specified purposes, and any of those purposes fail, then, whether the trust for sale is to arise in the lifetime of the settlor, or not until after his decease, the property to that extent results to the settlor in personalty from the moment the deed is executed: Clarke *v.* Franklin, 4 K. & J. 257.

(*f*) Wilson *v.* Coles, 28 Beav. 215.

(*g*) 3 De G. M. & G. 190.

the devisee must hold the estate saddled with a trust, when there was no such intention on the part of the testator, and when in fact the words have been introduced into the will rather for the purpose of communicating some of the general feelings of the testator, and of affecting the conscience of the devisee, than with a view to fetter the property in his hands.

As a general rule it has been laid down that when property is given absolutely to any person, and the same person is by the will recommended or entreated or wished to dispose of it in favour of another, the recommendation, entreaty, or wish, will create a trust; 1st, if the words are so used that upon the whole they ought to be construed as imperative; 2ndly, if the subject of the recommendation or wish be certain; and 3rdly, if the objects or persons intended to have the benefit of the recommendation or wish, be also certain (*h*).

Instances of trust.

The following are instances in which the words of gift have been held to create *a trust*:—

A devise to the testator's wife of real and personal estate, in the fullest confidence that after her decease she will devise the property to the testator's family (*i*); a recommendation to the testator's daughter to dispose of the property among her children (*k*); a gift by the testator to his wife, with a recommendation to her to dispose of the property by will amongst certain persons whom the testator named (*l*); a devise of copyholds to testator's wife, not doubting that she would dispose of the same to and amongst her children as she should please (*m*); a gift to a wife for her life, accompanied with the following words: "It being my will and desire that the principal should be left entirely to the disposal of my wife among such of her relations as she may think proper" (*n*).

(*h*) Knight *v.* Knight, 3 Beav. 148, 173; Bernard *v.* Minshull, 1 John. 276.

(*i*) Wright *v.* Atkyns, 19 Ves. 299.

(*k*) Malin *v.* Keighley, 2 Ves. 333.

(*l*) Horwood *v.* West, 1 Sim. & Stu. 387.

(*m*) Massey *v.* Sherman, Amb. 520.

(*n*) Birch *v.* Wade, 3 V. & B. 198; see also Briggs *v.* Penny, 3 M. & G. 546; Wace *v.* Mallard, 21 L. J. Ch. 355; Cholmondeley *v.* Cholmondeley, 14 Sim. 590; Paul *v.* Compton, 8 Ves. 380; Griffiths *v.* Evan, 5 Beav. 241; Alexander *v.* Alexan-

But in the following instances it was held that *no trust* was created:— Instances of no trust.

A bequest of dividends to the testator's brother to enable him to assist such of the children of ——— as he should find deserving of encouragement (*o*); a devise to the testator's wife that she might support herself and her children according to her discretion, and for that purpose (*p*); a gift to a son for his own use and benefit, well knowing he would discharge the trust reposed in him by remembering his, the testator's, other sons and daughters (*q*); a gift of income to testator's wife, with request to dispose of the savings among his children (*r*); a gift to the testator's wife of the capital of a business, trusting that she would act justly and properly to and by all the testator's children (*s*); a gift to two daughters, associated with the following words:—"If they die single of course they will leave what they have amongst their brothers and sisters, or their children" (*t*); a gift of real and personal estate to A. B., his heirs, executors, and assigns, for his and their own use and benefit for ever, trusting and wholly confiding in his honour that he will act in strict conformity with the testator's wishes (*u*); a gift to a wife, her executors, administrators and assigns to and for her and their own use and benefit, upon the fullest trust and confidence reposed in her that she would dispose of the same to and for the joint benefit of herself and his children (*x*); a gift of a legacy to a "wife to be disposed of by her will in such way as she shall think proper, but I recommend her to dispose of one-half to her own relations, and one-half among such of my relations as she shall think proper" (*y*); a gift to wife "being fully satisfied that she will dispose of same by will or otherwise, in a fair and equitable manner to our united relatives, bear-

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der, 4 W. Rep. 470; Bonser *v.* Kinnear, 2 Gif. 195; Foley *v.* Parry, 2 M. & K. 138.

(*o*) Benson *v.* Whittan, 5 Sim. 22.

(*p*) Thorp *v.* Owen, 2 Hare, 607.

(*q*) Bardswell *v.* Bardswell, 9 Sim. 319.

(*r*) Cowman *v.* Harrison, 10 Hare, 234.

(*s*) Pope *v.* Pope, 10 Sim. 1.

(*t*) Lechmere *v.* Lavie, 2 M. & K. 197.

(*u*) Wood *v.* Cox, 2 M. & C. 684.

(*x*) Webb *v.* Wools, 21 L. J. Ch. 625.

(*y*) Johnston *v.* Rowlands, 2 De G. & Sm. 356.

ing in mind that my relatives are generally in better circumstances than hers are" (*z*); a gift to wife "to and for her own use and benefit absolutely, having full confidence in her sufficient and judicious provision for my dear children" (*a*); a gift to wife "to be at her disposal in any way she may think best for the benefit of herself and family" (*b*); a gift to a married woman "for her own proper use and benefit" separately from her husband, "the proceeds to be applied by her in the maintenance of all her children" (*c*).

Will should state expressly whether trust is intended or not.

In some of the cases above referred to, the words were held not to create a trust on the ground that the interest given to the objects was not sufficiently defined (*d*). It follows that in the preparation of a will for a testator who wishes his devisee to dispose of the subject of the devise in a particular manner, but does not intend to create a trust binding on him, the will should contain some words or clause to make this intention manifest. If, on the other hand, the testator's object is to impose a trust, the trust and the nature of the discretion intended to be vested in the devisee should be declared in clear and formal language; and care should be taken that there is no uncertainty as to the subject or interest to be given, or the objects to be benefited.

X. *The effect of a charge of debts and the implied power of sale thereby created.*

Personal estate vests in executors for payment of debts.

All the personal estate of a deceased person (including his leasehold lands) vests in his executors in the first instance, although specifically bequeathed, and may be disposed of by them for the payment of the testator's

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(*z*) Reeves *v.* Baker, 18 Beav. 372; see also Winch *v.* Brutton, 14 Sim. 379; Knott *v.* Cottee, 2 Ph. 192; Knight *v.* Knight, 3 Beav. 148; see also Hill on Tr. 32; Palmer *v.* Simmonds, 2 Drew. 221; Green *v.* Marsden, 22 L. J. Ch. 1092.

(*a*) Fox *v.* Fox, 27 Beav. 301.

(*b*) Lambe *v.* Eames, L. R. 10 Eq. 267.

(*c*) Mackett *v.* Mackett, L. R. 14 Eq. 49.

(*d*) Hill on Tr. 44.

debts, and the purchaser is not bound to see to the application of his purchase-money.

Real estate formerly not liable to debts unless charged by will.

By the common law the real estate of a deceased person was not liable to his general debts, but if the testator by his will expressly charged his real estate with the payment of his debts, such a charge was, and of course still is, effective in equity.

In what cases a general direction for payment of debts creates a charge.

A general direction, or an expression of desire in a will that the testator's debts shall be paid, creates a charge on the real estate for their payment (*e*). But if such a direction or expression of desire is followed by the gift of a particular property for the purpose of paying debts, the *implied* charge will be considered as limited by the subsequent gift, and will be confined to the property included in such gift (*f*). Where, however, the will contains an *express* charge of debts upon the real estate, such express charge will not be cut down by the subsequent creation of a fund for the payment of the debts (*g*).

In what cases a direction that the debts shall be paid by the executors, is a charge.

A direction that the debts shall be paid by the executors does not of itself charge the real estate (*h*). If, however, the executors are also made devisees, the question whether the estate devised to them is thereby charged with the debts is one of intention to be collected from the whole of the will. Thus it has been held that a charge is created, where the devise is of all the real estate to the executor (there being only one) either beneficially or on trust, or to all the executors jointly (*i*), but not where one only of several executors is the devisee (*k*), or where the executors take unequally (*l*), or where part only of the real estate is given to them, and the rest given to others (*m*).

(*e*) 2 Jar. on Wills, 503; Ball *v.* Harris, 4 My. & Cr. 264; Harding v. Gandy, 1 Dr. & W. 430.

(*f*) Thomas *v.* Britnell, 2 Ves. Sen. 313; Palmer *v.* Graves, 1 Keen, 545. But see Jones *v.* Williams, 1 Col. C. C. 156.

(*g*) Coxe *v.* Basset, 3 Ves. 155; Wrigley *v.* Sykes, 21 Beav. 337.

(*h*) Keeling *v.* Brown, 5 Ves. 359; Wasse *v.* Heslington, 3 M. & K. 495.

(*i*) Henvell *v.* Whitaker, 3 Russ. 343; Finch *v.* Hattersley, 3 Russ. 345n.; Hartland *v.* Murrell, 27 Beav. 204; *In re* Tanqueray Willaume, &c., 20 Ch. D. 465.

(*k*) Warren *v.* Davies, 2 My. & K. 49.

(*l*) Symons *v.* James, 2 Y. & C. C. C. 301.

(*m*) *In re* Bailey, 12 Ch. D. 268.

A charge of debts confers a power of sale.

A charge of debts confers a power of sale for the purpose of giving effect to it. It was frequently a difficult question in the case of wills coming into operation before the passing of the Act about to be mentioned, who was or were the person or persons in whom the power of sale for payment of debts was vested (*n*). It is now, however, provided by sects. 14 to 18 inclusive of the 22 & 23 Vict. c. 35, as follows:—

Where real estate is charged with debts, devisee in trust may raise money to pay them.

> Sect. 14. Where by any will which shall come into operation after the passing of this Act, the testator shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid, by a sale and absolute disposition, by public auction or private contract, of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

(*n*) Elliott *v.* Merryman, Barn. 78; Walker *v.* Smallwood, Amb. 676; Eland *v.* Eland, 4 M. & C. 420; Shaw *v.* Borrer, 1 Keen, 559; Ball *v.* Harris, 4 M. & C. 264; Colyer *v.* Finch, 5 H. of L. Ca. 905; Storry *v.* Walsh, 18 Beav. 559; Hodkinson *v.* Quinn, 1 J. & H. 303; Robinson *v.* Lowater, 5 De G. M. & G. 272; Wrigley *v.* Sykes, 21 Beav. 337; Gosling *v.* Carter, 1 Coll. 644; Doe d. Jones *v.* Hughes, 6 Exch. 223. These cases are discussed at some length in a former edition of this work, but as they only apply to wills coming into operation before the 13th August, 1859, it is not thought necessary to do more than refer to them in this edition. See also for a comprehensive and valuable examination of the cases on the subject, Watters on the Trustee Acts, pp. 124 to 247.

15. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

Powers given by last section extended to survivors, devisees, &c.

16. If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested: but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Executors to have power of raising money, &c., where there is no sufficient devise.

17. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections 14, 15, and 16 of this Act or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Purchasers, &c., not bound to inquire as to powers.

18. The provisions contained in sections 14, 15, and 16 shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the passing of this Act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if

Sections 14, 15, and 16 not to affect certain sales, &c., nor to extend to devises in fee or in tail.

> this Act had not been passed, and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage, as he or they may by law now do.

Operation of section where testator has made a partial provision for debts.

According to the terms of sect. 14, the power is to be vested in the trustees only where the testator has not made any express provision for raising the debts, &c., out of the estate charged. It is conceived that the simple purpose of these words is to prevent any particular provision which the testator may have made for the application of his property, or of particular parts of it in payment of his debts, from being frustrated. If, however, he has made express provision for the payment of his debts out of particular parts of his estate, and such parts prove to be insufficient for the purpose, it is presumed that the trustees might sell the remainder of the estate vested in them under the powers conferred by this section in order to meet the deficiency (*o*).

Administrator with will annexed cannot sell under sect. 16.

It has been held that an administrator with the will annexed cannot sell under sect. 16 (*oo*).

Operation of 18th section.

Devisee in fee subject to debts can sell, &c., if he is also an executor.

It will be seen that under the 18th section the case of a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, is withdrawn from the Act. Under such a devise, it is well established that the devisee, if he is also the executor or one of the executors, can sell or mortgage, and that the purchaser or mortgagee is not bound to see to the application of his money, but whether a devisee not being an executor can make a good title alone, remains undecided (*p*).

How long power remains in force under the 14th section.

The existence of the power of sale conferred by the Act is not likely to create any practical difficulty in cases coming within the 14th section. The payment of debts

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(*o*) See Wrigley *v.* Sykes, 21 Beav. 337.

(*oo*) *Re* Clay and Tetley, 16 Ch. D. 3.

(*p*) Johnson *v.* Kennett, 3 M. & K. 624; Colyer *v.* Finch, 5 H. L. C. 905; Corser *v.* Cartwright, L. R. 7 H. L. 731.

is thereby in effect made one of the trusts on which the trustees hold the property, and upon any sale made by them within twenty years from the testator's death, a purchaser can safely take a title from them without inquiry (*q*).

How long under the 16th section.

But there is more difficulty in cases coming within the 16th section. Suppose, for instance, that the real estate is devised to the use of A. for life, with remainder to his first and other sons in tail. During A.'s life, the executors would clearly have a power of sale for payment of debts, but on A.'s death his eldest son bars the entail and becomes owner in fee simple, and the question is, whether the executor's power still subsists, or whether the case does not come within the exception at the end of the 18th section—in other words, whether that exception applies only to devises creating a fee simple or fee tail in possession at the testator's death, or extends also to estates originally limited in remainder, so soon as they become estates in possession.

Express provision for raising debts, &c., should be inserted.

On the whole, the above enactments cannot be considered as placing the law in relation to a charge of debts on a perfectly satisfactory footing, and the practitioner is recommended not to rely on them, but as a general rule to insert in a will an express provision for raising money to pay debts and legacies by proper trusts or powers vested in trustees for that purpose.

Real estate assets to be administered in equity.

If the will contains no express or implied charge for the payment of debts, the freehold and copyhold estates of persons dying after the 29th of August, 1833, as well as their personal estate, are, by the statute 3 & 4 Will. 4, c. 104, made assets to be administered in courts of equity for the payment thereof (whether due on simple contract or on specialty), but under this statute creditors by specialty, in which the heirs are bound, were given a preference over creditors by simple contract or by specialty, in which the heirs are not bound. But this preference is now abolished as regards persons dying on or after 1st January, 1870, by the statute 32 & 33 Vict.

Priority of specialty over simple contract debts abolished.

(*q*) *In re* Tanqueray Willaume and Landau, 20 Ch. D. 465.

c. 46, which provides that all the creditors of a person dying on or after that day, as well by specialty as by simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of the deceased person, whether such assets are legal or equitable.

Alienation by heir, &c., for value, good against creditors.

If any part of the real or personal estate of a testator has been *bonâ fide* alienated for valuable consideration by the heir, devisee, or legatee, and as to personal estate, with the assent of the executor, and whether such alienation is by way of sale, or by an ante-nuptial settlement, such alienation will prevail against any creditor of the testator (*s*), provided that no administration suit has been previously instituted. But a voluntary alienation, or a judgment entered up against the heir, devisee, or legatee, will not prevail (*t*).

Act extends to future liabilities.

The 3 & 4 Will. 4, c. 104, extends not only to debts due at the testator's death, but also to all liabilities which may result out of obligations entered into by him during his life (*u*).

Operation of devise for the payment of debts, as regards Statute of Limitations.

A devise or trust for the payment of debts raises no trust for the payment of those debts which have been barred by the Statute of Limitations prior to the death of the testator (*x*); and if the time allowed by the statute has not run out at the testator's death, such a devise or trust will not prevent the statute from running in equity after the death of the testator either as to real (*y*), or personal estate (*a*).

XI. *Descent, and the mode in which the personal estate of an intestate is distributed.*

Descent governed by Common Law and

The freehold land of a person dying intestate devolves according to the rules of descent established by the

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(*s*) Spackman *v.* Timbrell, 8 Sim. 253; Richardson *v.* Horton, 7 Beav. 123; Jones *v.* Noyes, 4 Jur. N. S. 1033; Dilkes *v.* Broadmead, 2 Giff. 113; 2 De G. F. & J. 566.

(*t*) Kinderley *v.* Jervis, 22 Beav. 1.

(*u*) Hamer's Devisees' case, 2 De G. M. & G. 366.

(*x*) Burke *v.* Jones, 2 Ves. & Bea. 275.

(*y*) 37 & 38 Vict. c. 57, s. 10.

(*a*) Evans *v.* Tweedy, 1 Beav. 55; Freake *v.* Cranefeldt, 3 M. & Cr. 499.

common law, as modified by the Act 3 & 4 Will. 4, c. 106, for a full statement and explanation of which the reader is referred to Stephen's Commentaries, Book II. Part I. c. xi. It will be sufficient here to state as a general result of these rules that the order of succession, where the intestate (whom we may call A.) has acquired land by purchase is as follows :—

Inheritance Act.

General result of rules of descent, as to order of succession.

(1.) First in order come A.'s eldest son and his issue *ad infinitum*, next A.'s second son and his issue, and so on to the youngest son. If A. has left no son nor issue of a son, A.'s daughters and their lineal descendants take in equal shares as between daughters, the issue of a deceased daughter representing her. As among the issue of deceased sons and daughters the descent is governed by the rules (i) that males are preferred to females (ii), that among males the eldest is preferred, while females take equally, and (iii) that the parent is always preferred to, and takes in exclusion of his own issue.

Sons according to seniority and their issue.

Daughters equally and their issue.

(2.) If A. has left no issue, his father succeeds.

Father.

(3.) If A. has left no issue nor a father, A.'s brother of the whole blood and their lineal descendants take, an elder brother and his issue being always preferred to younger brothers and their issue. The issue of a dead brother represent their parent as in the case of A.'s own sons.

Brothers and sisters of the whole blood.

(4.) Then come A.'s sisters of the whole blood equally and their issue, the issue of a dead sister representing her as in the case of A.'s daughters.

(5.) Then come A.'s half-brothers on the father's side, and their issue in similar order.

(6.) Then A.'s half-sisters on the father's side, and their issue in similar order.

Half-brothers and sisters on the father's side.

(7.) Then A.'s paternal grandfather, then A.'s paternal uncles and aunts, and their issue in similar order.

Paternal grandfather, uncles and aunts and their issue.

(8.) Then A.'s more remote paternal ancestors, and their issue in similar order, the nearer ancestor and his issue being always preferred to the more remote ancestor and his issue.

Other paternal ancestors and their issue.

Maternal ancestors and their issue.

(9.) When all the paternal line is exhausted, the maternal ancestors and their issue take in similar order.

Descent to be traced to last purchaser.

Where the intestate has himself acquired the land by descent, the descent on his death must be traced to the last purchaser, *i.e.* to the person who last acquired the land otherwise than by descent (*b*). In the application of this rule a question has arisen in the case of a man who after purchasing land dies intestate leaving two daughters, one of whom afterwards dies intestate leaving a son, whether the moiety of the deceased daughter passes entirely to the grandson, or to the other daughter and grandson equally. It has been held that the grandson takes the whole, he being in respect of that moiety the heir of the purchaser (*c*).

Succession to personal estate regulated (except in case of married woman) by Statute of Distributions.

General result.

The personal estate of an intestate (subject to the payment of his debts and funeral and testamentary expenses) is distributable (unless the intestate is a married woman) according to the rules laid down in the Act 22 & 23 Car. 2, c. 10, as amended by 1 Jac. 2, c. 17, sect. 7. The general result of these enactments is as follows:—

Widow's share.

(1.) If the intestate (whom we may call A.) leaves a widow, she takes one-third, if there are children, and if not, one-half.

Children and their representatives.

Advancements to be brought into hotchpot.

(2.) The children take equally between them two-thirds, if there is a widow, and if not, the whole. If any child has died before A. leaving issue, the issue take *per stirpes* the share which the deceased child would have taken if he or she had survived A., and this distribution *per stirpes* takes place when *all* A.'s children have died before him leaving issue (*d*). If any child of A. (not being his (heir-at-law) has any estate in land by the settlement of A., or has received any advancement from A. by way of portion, he must bring any such advancement into hotchpot (*e*).

(*b*) 3 & 4 Will. 4, c. 106, sect. 2.

(*c*) Cooper *v.* France, 19 L. J. Ch. 313.

(*d*) *Re* Ross's Trusts, L. R. 13 Eq. 286, contrary to the opinion expressed in Toller, 374, and transferred to 2 Wms. Exors. (7th ed.), 1497.

(*e*) 22 & 23 Car. 2, c. 10, sect. 3.

(3.) If A. leaves no issue, his father takes one-half or the whole, according as A. has left a widow or not.

Father.

(4.) If A. leaves no issue nor a father, one-half or the whole (according as A. has left a widow or not) goes to his mother (*f*) and brothers and sisters equally. If there are several brothers or sisters and some or one of them (but not all) have died leaving issue, the issue take *per stirpes* the share which their parent would have taken if living. The half-blood take in equal rank with the whole blood.

Mother brothers and sisters, and their representatives.

Half-blood take equally with whole blood.

(5.) If A. leaves no issue, father, brother or sister, one half or the whole (according as A. has left a widow or not) goes to his mother (if any), and if he leaves no mother, then to his nearest of kin in equal degree, but no representation is allowed among collaterals after brothers and sisters.

Mother.

Next of kin.

No representation after brothers and sisters.

(6.) Grandparents (on both sides without distinction) being in the second degree from A. take after brothers and sisters (*g*).

Grandparents.

(7.) After grandparents come uncles, aunts, nephews, and nieces (*h*), who all take *per capita*, being in the third degree.

Uncles, aunts, nephews, nieces.

(8.) Then come great grandparents, and after them great uncles and aunts, great nephews and nieces, and first cousins, being in the fourth degree, and so on to kindred in the fifth and more remote degrees, all in the same degree taking *per capita*.

Great grandparents, great uncles and aunts, great nephews and nieces, first cousins.

An advancement by portion within the 3rd section of the Statute of Distributions is a sum given by a parent to establish a child in life or to make a provision for such child; as, *e.g.*, on marriage, or by buying a commis-

What is an advancement.

(*f*) 1 Jac. 2, c. 17, sect. 7.

(*g*) Strictly they ought to come in with brothers and sisters, who are also in the second degree, but before the Statute of Distributions it had been held that brothers and sisters were to be preferred to grandparents, and this principle was adhered to afterwards. 2 Wms. Exors. (7th ed.).

(*h*) It will be borne in mind that if A. had left a brother or sister, and nephews or nieces, being the children of a deceased brother or sister, the nephews or nieces would have taken a share under (5), but if A. leaves no brothers or sisters, nephews and nieces can only come in as above stated.

sion or outfit for a son going into the army, or by buying the goodwill of a business, or by paying a son's admission fee to an Inn of Court, or the premium and stamp on his being articled to a solicitor, but mere annual payments will not be treated as advancements, *e.g.*, the payment of a fee to a special pleader in the case of a son going to the bar, or the price of outfit and passage-money of an officer in the army going out to India with his regiment (*i*) Whether the payment of a child's debts is an advancement would depend on the circumstances. In one case large sums paid by a father to a son to enable him to discharge debts of honour, the non-payment of which would have obliged him to leave the army, were held advancements (*k*), but in another case sums sent out to India to relieve the son from temporary embarrassments were held not to be advancements (*l*).

Husband entitled to whole of wife's personalty.

The Statute of Distributions does not apply to the case of a wife dying possessed of personal estate. In such case the husband is entitled to administer and to take the whole for his own use (*m*).

Customs of City of London, York, &c., repealed.

The special customs concerning the distribution of personal estates of intestates which formerly prevailed in the City of London, and in the Province of York, &c., are repealed as to all persons dying after the 31st Dec., 1856, by the 19 & 20 Vict. c. 94.

Distribution of moveable property is according to law of domicile.

Moveable property wherever locally situate is distributed according to the law of the place where the intestate was domiciled at his death, but for this purpose a chattel interest in land is not regarded as moveable.

XII. *The probate of wills and the stamp duties on probates and letters of administration, and under the Legacy and Succession Duty Acts.*

Wills of personalty must be proved.

Wills of personalty must be proved and administration to the effects of intestates taken out in the Probate Division of the High

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(*i*) Boyd *v.* Boyd, L. R. 4 Eq. 305; Taylor *v.* Taylor, *ib.* 20 Eq. 155.

(*k*) Boyd *v.* Boyd, *ubi supra.*

(*l*) Taylor *v.* Taylor, *ubi supra.*

(*m*) 29 Car. 2, c. 3, s. 25.

Court of Justice, either in the principal registry, or in the registry of the district in which the testator or intestate had a fixed place of abode at the time of his death (*mm*). Recent Acts (*n*) provide that where an intestate's estate does not exceed £100, the widow or children of the intestate, if residing more than three miles from the Probate District Registry, may apply to the Registrar of the County Court, and obtain letters of administration through him.

As to probate of will relating to real estate.

Previously to the Act 20 & 21 Vict. c. 77, a will which related to land only ought not to have been proved, and the probate was not evidence of the due execution of such will as to the land; but by section 64 of the above Act it is provided that in any action at law or suit in equity where according to the existing law it would be necessary to produce and prove an original will in order to establish a devise of real estate, the party intending to establish on proof such devise may give notice to the other party of his intention to produce the probate or a stamped copy in evidence, and in such case the probate or stamped copy shall be sufficient evidence, although the will may not have been proved in solemn form, unless the party receiving such notice shall within four days give notice that he disputes the validity of the devise. And by other sections of the Act, the probate or a stamped copy is made conclusive evidence of the due execution and contents of the will as to real estate, when the will has been proved in solemn form or has been established in a contentious cause or matter, and the heir-at-law has been cited (*o*).

Transmission of representation.

If an executor dies, having himself by will appointed an executor, the latter becomes the executor of the original testator, but if the first executor dies intestate, his administrator does not represent the original testator, but letters of administration *de bonis non* with the will annexed of the original testator must be taken out. In like manner, if A. dies intestate, and B. takes out letters of administration to his estate and afterwards dies, the executor or administrator of B. does not represent A., but new letters of administration *de bonis non* of A. must be taken out.

(*mm*) 20 & 21 Vict. c. 77, sect. 46.

(*n*) 36 & 37 Vict. c. 52; 38 & 39 Vict. c. 27.

(*o*) 20 & 21 Vict. c. 77, sects. 61, 62, 63.

If two or more persons are appointed executors and all prove the will, the representation passes to the executor of the last survivor.

Effect of renunciation by executor

Previously to the Act above referred to, if one of two joint executors renounced probate, the renunciation might be retracted at any time, and the renouncing executor come in and prove. Consequently, if one of two joint executors renounced, and the proving executor died first, the representation did not pass to his executor; and if the renouncing executor still refused to prove, letters of administration *de bonis non* to the original testator became necessary. But it is now provided that where an executor renounces probate of a will, or dies without having taken probate, or does not appear on a citation to take probate, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor (*p*).

Probate of will in exercise of power.

Probate is necessary of a will made in execution of a power and affecting personalty; but a will merely appointing a guardian need not be proved (*q*).

Stamp duties on probates and letters of administration after 1st June, 1881.

By the Customs and Inland Revenue Act, 1881 (*r*), the following stamp duties are imposed from and after the 1st June, 1881, on probates of wills and letters of administration in England or Ireland, instead of those previously in force, viz.—

Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted (*s*), *exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not*

(*p*) 20 & 21 Vict. c. 77, s. 79 : 21 & 22 Vict. c. 95, s. 16.

(*q*) *In re* Morton, 33 L. J. Prob. 87.

( ) 44 Vict. c. 12, sect. 27.

(*s*) By the 23 Vict. c. 15, s. 4, the personalty which any person dying on or after the 3rd of April, 1860, shall have disposed of by will under a general power is made liable to probate duty as if it were his own.

	Duty.
beneficially, shall be above the value of £100 and not above the value of £500	At the rate of £1 for every full sum of £50, and for any fractional part of £50 over any multiple of £50 :
Where such estate or effects shall be above the value of £500 and not above the value of £1,000 . .	At the rate of £1 5*s.* for every full sum of £50, and for any fractional part of £50 over any multiple of £50 :
Where such estate and effects shall be above the value of £1,000 .	At the rate of £3 for every full sum of £100, and for any fractional part of £100 over any multiple of £100.

It is also provided by the Act of 1881, section 38, that like duty shall be paid in respect of—

Donations mortis causâ and property comprised in voluntary settlements made subject to probate duty.

(*a*) Any property taken as a donation mortis causâ made by any person dying on or after the 1st June, 1881, or taken under a voluntary disposition made by any person so dying, purporting to operate as an immediate gift, *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made three months before the death of the deceased :

(*b*) Any property which a person dying on or after such day having been absolutely entitled thereto has voluntarily caused, or may voluntarily cause to be transferred to or vested in himself and any other person jointly, —whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person :

(*c*) Any property passing under any past or future voluntary settlement made by a person dying on or after such

> day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property.

If the voluntary instrument made liable to probate duty by the above enactment has paid the five shillings *ad valorem*, settlement duty, such duty will be returned (*t*).

Probate or administration duty payable only on personal estate within jurisdiction of court.

The probate or administration duty is payable in respect only of such personal estate as at the time of the death of the deceased is within the jurisdiction of the court. Consequently property which at the death is in a foreign country is exempt from duty, although it may be subsequently brought into this country by the executor. Thus it has been held that French Government *rentes* and United States stock are exempt from duty (*u*), while on the other hand the duty has been held to attach to the securities of a foreign government which were in this country at the death of the deceased, and were marketable securities here transferable by delivery only (*x*). Indian Government notes on which interest is payable in London are *bona notabilia* in England (*y*).

Duty when payable on proceeds of sale of land.

Whatever the executor receives *virtute officii* is liable to probate duty. Thus if a person enters into a binding contract to sell land, and such contract is completed after his death, duty is payable on the purchase-money (*z*). But duty is not payable in respect of the proceeds of land directed to be sold either by the will of the deceased or by a deed made in his lifetime, and which remains capable of being revoked by him up to the time of his death. Thus, where a freehold estate was conveyed by H. to trustees upon trust by sale or mortgage to pay certain debts, and

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(*t*) Sub-s. 3.

(*u*) Attorney-General *v.* Dimond, 1 Cromp. & Jerv. 356; Attorney-General *v.* Hope, 1 Crom. M. & R. 530.

(*x*) Attorney-General *v.* Bouwens, 4 M. & W. 171; 7 L. J. N. S. Ex. 297; see also Att.-Gen. *v.* Pratt, L. R. 9 Ex. 140.

(*y*) 23 & 24 Vict. c. 5, sect. 1.

(*z*) Attorney-General *v.* Brunning, 6 Jur., N. S. 1083; 30 L. J. Ex. 379.

to pay the residue of the proceeds to H., his executors, administrators, and assigns, the land was sold after H.'s death, and it was held that no probate duty was payable in respect of the proceeds (*a*). But if A. conveys land to trustees in trust to sell and pay the proceeds to B., and B. dies before the sale, it is conceived that probate duty would clearly be payable by B.'s executor in respect of such proceeds. And where land is devised in trust for sale, and there is a failure of the trusts so that the testator's heir takes the proceeds, such heir takes it as money, and on his death probate duty is payable on it, although the land still remains unsold (*b*).

Share of partner in real estate, whether subject to probate duty.

In a case where two partners bought freehold property out of the partnership funds, and the property was conveyed to uses, under which each partner took an undivided moiety in fee simple, it was held, on the death of one partner, that probate duty was not payable in respect of his share (*c*). In another case, the testator was one of two partners carrying on business in India. On his death part of the partnership property consisted of real estate which had been conveyed to the partners as joint tenants, and which was subsequently sold. It was held that legacy duty was payable in respect of the testator's share; and it seems from the judgment of the V.-C. that he would have held it to be liable to probate duty also if the question had arisen (*d*). The distinction between the two last mentioned cases seems to be this, that in the former the form in which the conveyance was made to the partners, giving each an undivided moiety in fee simple, showed an intention that there should not be a conversion, except if necessary for partnership purposes; whereas, in the latter case, the property was a mere partnership asset, and the testator had no interest in it, except as such.

The cases of *Matson* v. *Swift* and *Custance* v. *Bradshaw* have been approved of in a subsequent case (*e*).

Desperate debts.

Desperate and doubtful debts owing to the deceased are not liable to probate duty (*f*).

(*a*) Matson *v.* Swift, 8 Beav. 368.

(*b*) Att.-Gen. *v.* Lomas, L. R. 9 Ex. 29.

(*c*) Custance *v.* Bradshaw, 4 Hare, 315.

(*d*) Forbes *v.* Steven, L. R. 10 Eq. 178.

(*e*) *In re* De Lancey's Succession, L. R. 5 Ex. 102.

(*f*) Moses *v.* Crafter, 4 C. & P. 524.

Personalty disposed of under power.

Probate duty is payable in respect of personalty disposed of by a testator under a *general* power (*g*).

Where testator is domiciled abroad.

Probate duty is payable in respect of the personalty in this country of a testator domiciled abroad (*h*).

No deduction heretofore made for debts in first instance, but return of duty to be got afterwards

In making the necessary affidavit as to the value of the estate of the deceased, the executor or administrator has been heretofore not allowed to make any deduction for debts (*i*), except that since the 1st September, 1868, where leasehold estates were the sole security by way of mortgage for any debt owing from the deceased, the amount of such mortgage debt might be deducted (*k*). In all other cases an executor or administrator might obtain a return of probate or administration duty on showing that he had paid debts to such an amount as to reduce the value of the estate below the sum on which duty had been paid, but an application for this purpose must have been made within three years after probate, &c., except in special cases, when the time would be extended (*l*).

But under Act of 1881, deduction may be made for debts and funeral expenses.

It is now provided by the Customs and Inland Revenue Act, 1881, section 28, that the executor or administrator may deliver with the affidavit a schedule of the debts due from the deceased to persons resident in the United Kingdom and the funeral expenses, and that for the purpose of the duty the aggregate amount of such debts and expenses shall be deducted from the value of the estate.

Duties on legacies.

By the stat. 55 Geo. 3, c. 184, as modified and altered by the Customs and Inland Revenue Act of 1881, the following duties are payable on legacies, and successions to personal estates upon intestacies.

For every legacy, specific, or pecuniary, or of any other description, given by any will or testamentary instrument of any person, either out of his or her personal or moveable estate, or out of or charged upon his or her real or heritable estate, or out of any moneys to arise by the sale, mort-

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(*g*) 23 Vict. c. 15, s. 4.

(*h*) Trevor's Taxes on Succession, pp. 35—37.

(*i*) 55 Geo. 3, c. 184, s. 38.

(*k*) 31 & 32 Vict. c. 124, s. 7.

(*l*) 55 Geo. 3, c. 184, s. 51.

gage, or other disposition of his or her real or heritable estate, or any part thereof:

Also, for the clear residue (when devolving to one person), and for every share of the clear residue (when devolving to two or more persons) of the personal or moveable estate of any person (after deducting debts, funeral expenses, legacies, and other charges first payable thereout), whether the title to such residue, or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy:

And also for the clear residue (when given to one person), and for every share of the clear residue (when given to two or more persons) of the moneys to arise from the sale, mortgage, or other disposition of any real or heritable estate directed to be sold, mortgaged, or otherwise disposed of by any will or testamentary instrument of any person (after deducting debts, funeral expenses, legacies, and other charges first made payable thereout, if any):

Where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of *a child of the deceased, or any descendant of a child of the deceased*, or to or for the benefit of *the father or mother or any lineal ancestor of the deceased:*

	£ *s.* *d.*
If the legacy or residue or share of residue is payable out of or consists of any estate or effects which shall have paid probate or administration duty according to the Act of 1881 (*ll*)	No duty.
But if the legacy or residue or share of residue is payable out of, or consists of, any estate or effects in respect whereof	

(*ll*) 44 Vict. c. 12, s. 41.

	£	s.	d.
probate or administration duty is not payable under the Act of 1881	per cent. 1	0	0
Where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of *a brother or sister of the deceased, or any descendant of a brother or sister of the deceased*	per cent. 3	0	0
Where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of *a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased* . . .	per cent. 5	0	0
Where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of *a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased*	per cent. 6	0	0
And where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of any person *in any other degree of collateral consanguinity to the deceased* than is above described, or to or for the benefit of *any stranger in blood to the deceased*	per cent. 10	0	0

And all gifts of annuities or by way of annuity, or of any other partial benefit or interest out of any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this schedule.

Exemptions.

Legacies and residues, or shares of residue of any such estate or effects as aforesaid, given or devolving to or for the benefit of the husband or wife of the deceased, or to or for the benefit of any of the Royal Family (*m*).

And all legacies which were exempted from duty by the Act passed in the 39th year of Geo. the 3rd, c. 73, for exempting certain specific legacies given to bodies corporate or other public bodies, from the payment of duty (*m*).

Legacies and residue, or shares of residue of or out of the estate and effects of any person where the whole of such estate and effects does not amount to £100 (*n*).

Legacies or residue or shares of residue of less amount or value than £20, where the testator or intestate died before 1st June, 1881 (*nn*).

Legacies given for the education or maintenance of poor children in Ireland, or to be applied in support of any public charitable institution in Ireland, or for any purpose (in Ireland) merely charitable (*o*).

The following is an abstract of the most important provisions of the Legacy Duty Acts now in force:

Duty to be paid by executor before paying legacy.

The duty is to be paid by the executor (*p*) upon the payment of the legacy, and in default of payment, the duty is a debt from the executor and also from the legatee (*q*).

What is a legacy within the meaning of the Acts.

Every gift by will or testamentary instrument, which by virtue thereof is to have effect out of the personal estate of the deceased or out of any personal estate which he had power to dispose of, or is charged upon his real estate or any real estate which he had power to charge with the payment of money, or is payable out of any money to arise by sale, mortgage, or other disposition of such real estate, and whether such gift be by way of annuity, or in any other form, is to be deemed a legacy for the purpose of the Acts; and every donation *mortis causâ* is

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(*m*) 55 Geo. 3, c. 184.

(*n*) 43 Vict. c. 14, s. 13.

(*nn*) 44 Vict. c. 12, s. 42.

(*o*) 5 & 6 Vict. c. 82, s. 38.

(*p*) It will be borne in mind that the term "executor" in the above abstract includes an administrator, and that the term "legacy" includes a residue or share of a residue.

(*q*) 36 Geo. 3, c. 52, s. 6.

also to be deemed a legacy. But no money which by any marriage settlement is subject to any limited power of appointment for the benefit of persons therein specially named and described as the objects of such power, or any issue of such persons, shall be liable to duty under the will by which the power is exercised (*r*).

The value of annuities to be calculated according to tables, and to be payable by four instalments.

The value of an annuity is to be calculated according to the tables in the schedule to the Succession Duty Act 1853 (*s*), and the duty thereon is made payable in four equal annual instalments, and the value is to be calculated without regard to any contingency on which it may be determinable. But if the annuity determines by death before the end of the four years, the duty is payable in proportion only to so many of the payments of the annuity as actually became due and payable, and in case the annuity determines by any other contingency than death, not only all future instalments of duty cease to be payable, but a return is to be made of so much of the duty actually paid as will reduce the same to the amount which would have been payable for such annuity calculated according to the term for which it shall have endured (*t*).

The value of annuities payable out of legacies, how to be calculated and paid.

The value of an annuity charged on a legacy is to be ascertained in the same manner, and the duty on the legacy is to be paid on its value, after deducting the value of the annuity. The duty on the annuity is to be paid by the legatee, and he is to retain the same out of the annuity (*u*).

Duty on legacies given to purchase annuities.

The duty upon any legacy given by direction to purchase an annuity of a certain amount is to be calculated upon the sum necessary to purchase the annuity according to the before mentioned tables, and the annuity to be purchased is to be reduced proportionably (*x*).

Duty on legacies whose value can only be ascertained by application of the allotted fund.

The duty on legacies whose value can only be ascertained by actual application of the allotted fund is to be charged on the money or effects as applied (*y*).

How duties on legacies enjoyed by

The duty on legacies enjoyed by persons in succession is to be charged as follows: If all the persons interested are chargeable at the same rate, the duty is to be charged on the legacy and

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(*r*) 8 & 9 Vict. c. 76, s. 4; see also 45 Geo. 3, c. 28, ss. 4, 5.

(*s*) See 16 & 17 Vict. c. 51, s. 31.

(*t*) 36 Geo. 3, c. 52, s. 8.

(*u*) Sect. 9.

(*x*) Sect. 10.

(*y*) Sect. 11.

paid as if it were a legacy to one and the same person; but if the persons interested are chargeable at different rates, then the persons having life or other temporary interests are to be charged on such interests as if the annual produce had been given to them by way of annuity, and the person who becomes absolutely entitled is to be charged with duty on the *corpus* when it falls into possession (*z*).

persons in succession shall be charged,

Where the duty payable on a legacy given to different persons in succession is chargeable at one and the same rate, the executor is to pay it before he transfers or pays the legacy to the trustees of it, but where such duty is chargeable at different rates, then the duty is to be paid by the executor unless the legacy has been paid to or vested in any trustee, in which case the trustee is to be liable for the duty as if he were the executor (*a*).

and whether payable by executor or trustees.

Plate, furniture, or other things, not yielding income, are not liable to duty while enjoyed by persons who have no right to dispose thereof (*b*).

Plate, &c.

The duty on legacies enjoyed in succession is to be charged as such, whether the person entitled take under the will or by intestacy (*c*).

Duties apply to intestacies.

The duty on legacies given on joint tenancy is to be paid by the joint tenants in proportion to their interests (*d*).

Legacies to joint tenants.

Where a legacy is contingent the duty is payable as if it were an absolute legacy to the first legatee, although the person entitled to the benefit of the contingency may not be liable to the same duty or to any duty: and if the contingency happens and the person thus becoming entitled is chargeable with a higher rate of duty, he must pay the difference (*e*).

Legacies given on contingencies.

Where a legacy is subject to a power of appointment in favour of special objects, the property is charged with duty as property given to different persons in succession, and the appointees are chargeable as if they had taken under the will creating the power. Where any property is given for a limited interest, and an absolute power of appointment is given to any person to whom the property would not go in default of appointment, the property is upon the execution of the power charged with duty as if it had

Legacies subjected to power of appointment how to be charged.

(*z*) Sect. 12.
(*a*) 36 Geo. 3, c. 52, s. 13.
(*b*) Sect. 14.
(*c*) Sect. 15.
(*d*) Sect. 16.
(*e*) Sect. 17.

been immediately given to the donee of the power after allowing any duty previously paid in respect thereof. Where any property is given with an absolute power of appointment and in default of appointment to the donee of the power, the property is chargeable as if it had been given to the donee in the first instance without the power (*f*).

Personal estate directed to be applied in purchase of real estate.

Personal estate directed to be laid out in purchase of real estate is charged with duty as personal estate, unless it is given so as to be enjoyed by different persons in succession, and then each party is to pay duty as if it had not been directed to be laid out in real estate, unless it shall have been actually so laid out before the duty accrued, but no duty shall accrue in respect thereof after it has been so laid out. If before the personal estate is laid out, any person becomes entitled to an estate of inheritance in possession in the real estate to be purchased therewith, the duty is to be charged on it as personal estate and paid thereout (*g*), and this applies not only where the person so becoming entitled is the original donee, but also to every subsequent devolution of the equitable inheritance previously to the money being so laid out (*h*).

Estates *pur autre vie.*

Estates *pur autre vie* applicable by law as personal estate are charged with duty as personal estate (*i*).

Money left to pay duty not chargeable.

If a legacy is given with a direction to pay the duty out of some other fund, the money applied in payment of the duty is not chargeable with the duty (*k*).

Specific legacies.

Specific legacies and bequests of property not reduced into money are to be valued in the manner pointed out in the Act (*l*).

Duty on legacies not satisfied in money, &c.

Where a legacy is satisfied otherwise than by actual payment, or is released for consideration, or is compounded for, the duty is chargeable on the amount or value of the property taken in satisfaction thereof, or as the consideration for the release thereof, or composition for the same, and where a legacy is given in satisfaction of any other legacy, the duty is not to be paid on both subjects, but on that yielding the largest duty (*m*).

Legatees refusing

If a legatee refuse to accept his legacy after deducting the

(*f*) Sect. 18.

(*g*) 36 Geo. 3, c. 52, s. 19.

(*h*) *In re* De Lancey, L. R. 5 Ex. 102; S. C., *ib.* 7 Ex. 140.

(*i*) 36 Geo. 3, c. 52, s. 20.

(*k*) Sect. 21.

(*l*) Sect. 22.

(*m*) Sect. 23.

to accept legacies, duly deducted, to pay costs.

duty and to give a proper discharge for it, and if a suit is afterwards instituted for such legacy, the Court may order the legatee so refusing to pay costs (*n*).

Court to provide for duty in administration suits.

In administration suits the Court is to provide for the payment of the duty (*o*).

No legacy liable to duty to be paid without stamped receipt.

No executor may pay a legacy chargeable with duty without taking a receipt for the same, expressing the names of the testator or intestate, and of the executor and legatee, and the amount or value of the legacy, and the amount of the duty, and such receipt must be stamped; and any executor or administrator or legatee paying or receiving a legacy without such receipt is liable to a penalty of £10 (*p*).

As to stamping the receipt.

The receipt must be taken to the head office or some other office of the commissioners to be stamped within twenty-one days after its date, or, upon paying a penalty of 10 per cent. on the duty, within three months after date (*q*), and after the three months the head office may, on payment of the penalty, stamp the receipt, and the commissioners may in certain cases remit the penalty (*r*).

Mistakes as to duty may be rectified.

Where too little duty is paid by mistake, the commissioners may, within three months, if no suit is instituted, accept the difference with 10 per cent. on the difference (*s*).

Power to executors to pay legacies of infants, &c., into court.

Where by reason of infancy or absence beyond the seas of the legatee the executor cannot pay a legacy or residue, he may pay it into Court after deducting the duty (*t*).

As to compounding for duties.

The commissioners may in certain cases, with the sanction of the Court of Exchequer, accept a composition for the duties (*u*).

Refunding duty.

If any legacy or part of residue has to be refunded by reason of debts of the testator or otherwise, the duty is to be repaid.

Executor retaining legacy to transmit particulars to commissioners

An executor, to whom a legacy or residue is given, must, before retaining it, transmit the particulars to the commissioners who are to assess the duty thereon (*x*).

Liability to duty.

The liability to legacy duty on the personal estate depends on

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(*n*) Sect. 24.

(*o*) Sect. 25.

(*p*) Sects. 27, 28.

(*q*) 36 Geo. 3, c. 52, s. 29.

(*r*) 48 Geo. 3, c. 149, s. 44.

(*s*) 36 Geo. 3, c. 52, s. 30.

(*t*) Sect. 32.

(*u*) Sect. 33. See also 43 Vict. c. 14, s. 11.

(*x*) Sect. 36.

depends on domicile.

the domicile of the deceased at the time of his death, all personal estate being supposed to be locally situate in the place where the owner died. If he was domiciled in England at the time of his death, his personal estate both in England and abroad is liable to the duty, but if he was domiciled abroad no duty is payable on his personal estate either in England or abroad (*y*). And where a man who is domiciled abroad at his death makes his will under a general power, the personal property thus appointed is exempt from legacy duty (*z*). But an estate *pur autre vie* in land in England, "applicable by law in the same manner as personal estate," is liable to legacy duty under sect. 20 of 36 Geo. 3, c. 52, although the owner may be domiciled abroad (*a*).

The Commissioners of Inland Revenue are empowered to accept composition for legacy duty (*aa*).

Arrears of legacy and succession duty bear interest at 4 per cent. (*b*).

THE SUCCESSION DUTY ACT, which came into operation on the 19th of May, 1853, contains the following provisions:

Sect. 2. What dispositions of property confer successions.

Section 2 provides that every past or future disposition of property by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person so entitled by reason of any such disposi-

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(*y*) Thompson *v.* The Advocate-General, 12 Clark & Fin. 1; *Re* Napier, 6 Exch. Rep. 217.

(*z*) *In re* Wallop's Trust, 33 L. J. Ch. 351.

(*a*) Chatfield *v.* Berchtoldt, L. R. 7 C. A. 192.

(*aa*) 44 Vict. c. 12, s. 43.

(*b*) 31 & 32 Vict. c. 124, s. 9.

tion or devolution a "succession," and the term "successor" shall denote the person so entitled, and the term "predecessor" shall denote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.

Section 3 provides, that when persons have any property vested in them jointly by a title not conferring on them a succession, a beneficial interest in such property accruing to any of them by survivorship shall be deemed a succession.

Sect. 3. Title by survivorship confers a succession.

Section 4 provides, that when a person has a power of appointment under a disposition of property taking effect on the death of a person dying after the time appointed for the commencement of the Act, over property, he shall, in the event of his making an appointment thereunder, be deemed to be entitled, at the time of exercising the power, to the interest appointed as a succession derived from the donor of the power; and where a person has a limited power of appointment under such a disposition over property, the person taking the appointed property will be deemed to take the same as a succession derived from the person exercising the power as predecessor.

Sect. 4. Power of appointment.

Section 5 provides, that where property is subject to a charge, estate, or interest determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person on the extinction or determination of the charge, &c., shall be deemed a succession accruing to the person then entitled beneficially to the property or the income thereof: but under section 6, persons entitled, at the time appointed for the commencement of the Act, to real property subject to leases for lives or for years determinable on life, are not liable to duty in respect of the determination of such leases in the event of the same occurring in his life.

Sects. 5, 6. Extinction of determinable interests confers a succession except in certain cases.

Section 7 provides, that where any disposition of property not being a sale, and not conferring an interest expectant on death on the person in whose favour the same shall be made, is accompanied by a reservation or assurance of, or contract for any benefit to the grantor or any other person for life, or for any period ascertainable only by reference to death, such disposition will confer, at the time appointed for the determination of such benefit, an increase of beneficial interest in such property as a

Sect. 7. Disposition accompanied by reservation of benefit to grantor, &c. confers a succession.

succession equal in annual value to the yearly value of the benefit so reserved, &c.

Sect 8

Under section 8, dispositions to take effect at periods depending on death, or made for evading duty, are to confer successions.

Sect 10
Rate of duty.

Section 10 provides, that in respect of every such succession as aforesaid, according to the value thereof, the following duties shall be levied and paid (that is to say):—

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of one pound *per centum* upon such value: (*a*)

Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds *per centum* upon such value:

Where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds *per centum* upon such value:

Where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a duty at the rate of six pounds *per centum* upon such value:

Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a duty at the rate of ten pounds *per centum* upon such value.

Sect. 11.
Provisions as to married persons

The 11th section provides, that where any person chargeable with succession duty, or with legacy duty under the Legacy Duty Acts, shall be married to a wife or husband of nearer consanguinity to the predecessor, the duty shall be payable as if the wife or husband were the successor.

Sect. 12.
What duties

Section 12 provides, that where a person shall take a succes-

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(*a*) This duty is not payable in respect of any succession to leaseholds or other property which has paid probate or administration duty under the Customs and Inland Revenue Act, 1881.

sion under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property expectantly on the death of any person dying after the commencement of the Act, and such person shall have died during the continuance of such disposition, he shall be chargeable with duty on his succession at the same rate as he would have been chargeable if no such disposition had been made; but a successor is not to be liable to duty in any other case under a disposition made by himself, and no person shall be chargeable with duty upon the extinction or determination of a charge or interest created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto on the death of some person dying after the time appointed for the commencement of the Act.

payable when successor is also predecessor.

Section 13 provides, that where the successor shall derive his succession from more predecessors than one, and the proportional interest derived from each of them shall not be distinguishable, it shall be lawful for the commissioners to agree with the successor as to the duty payable; but if no such agreement shall be made, the successor shall be deemed to have derived his succession in equal proportions from each predecessor, and shall be chargeable with duty accordingly.

Sect. 13. Provision as to joint predecessors.

Section 14 provides, that where the interest of any successor in personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession, but such duty shall be at the highest rate, which, if every such successor had been subject to duty, would have been payable by any of them.

Sect. 14. Where there has been a devolution by death of a successor, only one duty to be paid at the higher rate.

Section 15 provides, that where, at the time of the commencement of the Act any reversionary property expectant on death shall be vested by alienation or other derivative title in any person, such person shall be charged with duty at the same time and rate as the original successor would have been chargeable if there had been no alienation, &c., and where, *after* the commencement of the Act, any succession shall, before falling into possession, have become vested by alienation or any title not conferring a new succession in any other person, the duty shall be paid at the same rate and time as if there had been no such

Sect. 15.

Duty to be paid by alienee of succession.

alienation, &c., and where the title to any succession shall be accelerated by the surrender or extinction of any prior interest, the duty shall be payable as if there had been no such acceleration.

Sect. 16. Gifts to charities, &c.

Under section 16, property given to any charitable or public purpose is made liable to duty at 10 per cent.

Sect. 17. Provision for policies on life and contracts for valuable consideration.

Section 17 provides, that no policy of assurance on life shall create the relation of predecessor and successor between the insurers and the assured, and no bond or contract made by any person *bonâ fide* for valuable consideration in money or money's worth for the payment of money or money's worth after the death of any other person, shall create the relation of predecessor and successor between the parties, but a disposition or devolution of the moneys payable under such policy, bond, or contract, may create a succession.

Sect. 18. Exemptions.

The 18th section provides, that where the whole succession or successions derived from the same predecessor, and passing upon any death to any person or persons, shall not amount in money or principal value to £100, no duty shall be payable, and that no duty shall be payable upon any succession of less value than £20 in the whole, *or* upon any moneys applied to the payment of the duty on any succession according to any trust for that purpose, *or* by any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy Duty Acts (*c*). And no person shall be charged with duty under this Act in respect of any interest surrendered by him or extinguished before the time appointed for the commencement of this Act. And no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts, in respect of any property subject to such duties, shall be charged also with the duty granted by this Act in respect of the same acquisition of the same property.

Sect. 19. Leaseholds to be charged with succession duty instead of legacy duty

The 19th section declares that leasehold hereditaments shall no longer be chargeable under the Legacy Duty Acts as belonging to the personal estate of the testator or deceased.

(*c*) This exemption applies only to express exemptions in the Legacy Duty Acts, *i.e.*, gift to husband and wife, to the royal family, and to certain charities: Attorney-General *v.* Fitzjohn, 2 H. & N. 465.

The 20th section provides, that the duty shall be paid at the time when the successor becomes entitled in possession to his succession, except that if there be a prior charge or interest not created by the successor, the duty in respect of the increased value accruing on the determination of the charge or interest shall be paid at the time of such determination, and except that in case of an annuity or property chargeable as such the duties shall be paid by instalments, and that no duty shall be paid on the determination of a lease at rack rent in respect of the increase accruing to the successor on such determination.

Sect. 20. Duties to be paid on successor becoming entitled in possession.

The 21st section provides, that the interest of a successor in real property shall be taken to be of the value of an annuity equal to the annual value of the property, and that every such annuity shall be valued according to the tables in the schedule annexed to the Act, and the duty chargeable thereon shall be paid by eight equal instalments, the first instalment to be paid at the expiration of twelve calendar months after the succession falls into possession, and the remaining seven instalments to be paid half-yearly; provided that if the successor die before all the instalments have become due, those that are not due at his decease shall cease to be payable except in the case of a successor who shall have been competent to dispose by will of a continuing interest in such property, in which case the instalments unpaid at his death shall be a continuing charge on such interest in exoneration of his other property, and shall be payable by the owner for the time being of such interest.

Sect. 21. Interest of successor in real property to be considered as an annuity.

Section 22 provides, that in estimating the value of lands, houses, &c., an allowance shall be made for all necessary outgoings; and sections 23 to 28 contain rules as to timber, advowsons, property subject to beneficial leases, manors, mines, &c., real estate taken by corporations, and copyhold property.

Sects. 22 to 28.

The 29th section provides, that the interest of any successor in moneys to arise from the sale of real property under any trust for the sale thereof, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, shall be deemed to be personal property chargeable with duty under this Act; provided that where such moneys shall be subject to any trusts for the reinvestment thereof in the purchase of other real property, to which the successor would not be absolutely entitled, such

Sect. 29. Real property directed to be sold to be charged as personalty.

moneys shall be deemed to be real property, and for the purpose of the Act each successor's interest therein shall be considered to be of the value of an annuity payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall then be the real property subject to the trust or directions for sale, or any property purchased in substitution for it, or any intermediate investment of the produce of the sale of the original property.

Sect. 30. Personal property to be invested in land, how to be charged.

Section 30 provides, that the interest of any successor in personal property, subject to any trust for the investment thereof in the purchase of real property to which the successor would be absolutely entitled, shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with the duty under this Act as personal property; and personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would not be absolutely entitled, shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as real property; and for the purposes of this Act each successor's interest therein shall be considered to be of the value of an annuity payable during his life, or for any less period, during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall be the real property directed to be purchased, or any intermediate investment of the personal property directed to be invested in such purchase.

Sects. 31 and 32.

Section 31 provides, that the value of annuities shall be calculated for the purposes of that Act and the Legacy Duty Acts according to the tables annexed to that Act; and section 32 makes sections 8, 10, 11, 12, 14, and 23 of 36 Geo. 3, c. 52, applicable to personal property comprised in successions.

Sect. 33. Allowance to donee of general power of appointment.

The 33rd section declares, that where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in the property.

Sects. 34 to 36. What allowance to be made for incumbrances.

The 34th section provides, that in estimating the value of a succession, no allowance shall be made in respect of any incumbrance created or incurred by the successor, not made in execution of a prior special power of appointment; but an allowance shall be made in respect of all other incumbrances, and for moneys laid out by the successor previously to his possession, in substantial repairs or permanent improvements; and the two following sections contain further provisions as to allowances.

Sect. 38. Allowance to be made in respect of relinquished property.

Section 38 provides, that where any successor, upon taking a succession, shall be bound to relinquish or be deprived of any other property, the commissioners shall, upon the computation of the assessable value of his succession, make such allowance to him as may be just in respect of the value of such property (*d*).

Sects. 39, 40, and 41. As to compounding and payment in advance of duty.

The 39th, 40th, and 41st sections enable the commissioners to compound duties, and to receive any duty in advance, and to allow discount thereon.

Sect. 42. Duty to be a first charge on property.

The 42nd section declares, that the duty imposed by the Act shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed: and such duty shall also be a first charge on the interest of the successor in the personal property in respect whereof the same shall be assessed while the same shall remain in the ownership or control of the successor, or of any trustee for him, or of his guardian or committee, or tutor or curator, or of the husband of any wife who shall be the successor; and the said duty shall be a debt due to the Crown from the successor having, in the case of real property comprised in any succession, priority over all charges and interests created by him, but such duty shall not charge or affect any other real property of the successor than the property comprised in such succession; provided that where any settled real property comprised in a succession shall be subject to any power of sale, exchange, or partition, exerciseable with the consent of the successor, or by the successor with the consent of another person, he shall not be disqualified by the charge of duty on his succession from effectually authorising by his consent the exercise of such

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(*d*) See *re* Micklethwait, 11 Exch. Rep. 452; Attorney-General *v.* Sibthorpe, *ubi suprà*.

power or exercising any power with proper consent, as the case may be, and in such case the duty shall be charged substitutively upon the successor's interest in all real property acquired in substitution for the real property before comprised in the succession, and in the meantime upon his interest, also in all moneys arising from the exercise of any such power, and in all investments of such moneys.

Sect. 44. What persons accountable for duty.

The 44th section makes trustees and others, as well as the successor himself, personally accountable for the duty.

Sects. 45 to 50. General provisions.

Sects. 51 and 52. Receipts and certificates of payment to be given.

Sections 45 to 50 relate to the proceedings to be adopted in reference to the payment of the duties; and sections 51 and 52 provide for the delivery of stamped receipts for the duty, and also for the delivery of a certificate of payment to any person interested in the property affected by such duty, on applying for the same, which receipt and certificate will exonerate *bonâ fide* purchasers without notice, notwithstanding any suppression or misstatement in the account upon the footing whereof the same has been assessed.

Where probate duty has been paid, succession duty at one per cent not payable.

When any property liable to succession duty at one per cent. has been made to pay probate duty under the Customs and Inland Revenue Act, 1881, the succession duty will not be payable (*e*).

The following points have been decided on the construction of the Succession Duty Acts:

Succession duty attaches irrespective of domicile of settlor.

1. That where a testator dies domiciled abroad, succession duty attaches to his real estate situate in this country, but not to his personal estate on the original bequest thereof; but if personal estate is given by the will of a person domiciled abroad to trustees for the benefit of persons in succession, and the fund is invested by the trustees in this country, succession duty will be payable on all future devolutions under the trusts, though the party on whom it devolve may (like the testator) be domiciled abroad (*ee*). And foreign moveable property, *e.g.*, foreign government funds, comprised in a British settlement and vested in

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(*e*) Sect. 41.

(*ee*) Wallace *v.* Attorney-General, 1 L. R. C. A. 1; Attorney-General *v.* Campbell, *ib.* 5 H. L. 524; *Re* Capdevielle, 33 L. J. Ex. 306; *Re* Smith's Trusts, 12 W. R. 933; *Re* Badart's Trusts, L. R. 10 Eq. 288; *Re* Lovelace, 4 De G. & J. 340; *Re* Wallop's Trusts, 1 De G. J. & S. 656 Lyall *v.* Lyall, L. R. 15 Eq. 1.

trustees subject to British jurisdiction, and recoverable by the beneficiaries in a British court, is subject to succession duty although the beneficiaries may be domiciled abroad (*f*).

Duty attaches wherever succession falls into possession after Act.

2. That a person is liable to succession duty in respect of property to which he succeeds after the commencement of the Act, although he may have become entitled thereto in expectancy *before* the Act (*g*).

Sect. 2 applies to all cases of succession not within other sections.

Instances of the rule.

3. That section 2 applies to every case where a person becomes entitled to property by any means upon the death of a person dying after the commencement of the Act, unless such case comes within the operation of some other section. Thus where under a marriage settlement property was settled in trust for the husband and wife successively for life with remainder (in an event which happened) as the wife should by deed or will appoint, the husband died before the Act, and the wife died in 1856, having by her will appointed the property. It was held that as the power came into operation before the commencement of the Act, the case was not within the 4th section; that it was consequently within the general provision of the 2nd section, and that for the purpose of the duty the appointee was the successor and the original settlor the predecessor (*h*).

So also, where by a marriage settlement property belonging to the wife's father was limited to the husband and wife successively for life with remainder (in the event which happened) as the wife should by deed or will appoint. The wife by deed appointed the property to her father, the original settlor, who died in 1831, having devised it to a stranger in blood. The wife survived her husband, and died after the commencement of the Act. It was held that as no duty would have been payable by the father if he had survived his daughter, he being himself the predecessor as well as successor, the case was not within the 15th section; that it therefore came within the general provision of the 2nd section, and that a duty of 10 per cent. was payable by the devisee of the father (*i*).

(*f*) Cigala's Settlement Trusts, 7 Ch. D. 351.

(*g*) Wilcox *v.* Smith, 4 Drew. 40; Attorney-General *v.* Middleton, 3 H. & N. 125; S. C. 27 L. J. Ex. 229; see, too, Attorney-General *v.* Gell, 34 L. J. Ex. 145.

(*h*) *Re* Lovelace, 4 De G. & J. 340. See also *in re* Barker, 7 H. & N. 109; S. C. 30 L. J. Ex. 404; Attorney-General *v.* Mitchell, 6 Q. B. D. 548.

(*i*) Attorney-General *v.* Gardener, 32 L. J. Ex. 84.

Rule that descent is to be traced from last purchaser does not apply to succession duty.

4. That if A. dies intestate, leaving two sons, B. and C., and afterwards B. dies intestate, leaving his brother C. his heir, he B. and not A. is the predecessor, and 3 per cent. is payable notwithstanding the Act 3 & 4 Will. 4, c. 106, sect. 2 (*k*).

Under 4th section, "death after commencement of Act" refers to power.

5. That the words in the 4th section, "taking effect on the death of a person dying after the commencement of the Act," refer to the power of appointment, and not to the disposition by which the power is created, or to the disposition made under the power (*l*).

4th section does not apply to joint powers.

6. That the 4th section applies to the case of one person having a general power, but not to a power given in a family settlement to a father and son jointly, where one is intended to be a check upon the other. Under an appointment made in exercise of a joint power, the donor, not the donee, is the predecessor (*ll*).

After appointment by one under general power, donee is predecessor.

7. That under the 4th section the donee of a general power taking effect on a death happening since the commencement of the Act, becomes, by exercising the power, the successor as to the estate appointed, as if such estate had been limited to him by the original instrument, and if such donee so exercises the power as to create a succession, the appointee pays duty upon a succession derived from the donee, and not from the original settlor (*m*).

Where a charge in reversion is created for a valuable consideration in money or money's worth, and settled, purchaser is predecessor.

8. That if A., entitled to property in remainder expectant on a life estate, for a valuable consideration in money or money's worth, charges his remainder with a sum of money in favour of B., and B. settles the sum so charged, duty will be payable on that sum on the death of the tenant for life, and for this purpose, B. (and not A.) will be considered the predecessor (*n*).

Marriage is not a valuable consideration.

9. That marriage is not a valuable consideration in money or money's worth within the meaning of the 17th section (*o*).

On re-settlement by tenants for life and in

10. That if A. is tenant for life with remainder to his eldest son B. in tail, and on B. coming of age, A. and B. disentail the property and make a re-settlement under which B. takes a rent-

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(*k*) Lord Saltoun *v.* Advocate-General, 3 Macq. 659.

(*l*) *In re* Lovelace, *ubi suprà.*

(*ll*) Charlton *v.* Attorney-General, 4 App. Cas. 427.

(*m*) Attorney-General *v.* Upton, 1 L. R. Ex. 224.

(*n*) *Re* Jenkinson, 24 Beav. 64; Attorney-General *v.* Yelverton, 7 H. & N. 306; 30 L. J. Ex. 333. See also *in re* Ramsay's Settlement, 30 Beav. 75.

(*o*) Floyer *v.* Banks, 33 L. J. Ch. 1.

tail, what duty payable.

charge during the joint lives of A. and B., and subject to such rent-charge the property is limited to A. for life with remainder to B. for life, with remainder to B.'s first and other sons in tail, &c., B.'s life estate is a succession under a disposition made by himself alone within the meaning of the 12th section, and not a succession derived from joint predecessors under the 13th section, and consequently B. on the death of A. will be liable to duty, and for this purpose the original settlor remains the predecessor (*p*).

Construction of 38th section as to deduction for loss of property.

11. That in the case mentioned in the last paragraph, B. is entitled, under section 38, to a deduction for the annuity which he loses on A.'s death, and for this purpose it makes no difference whether the re-settlement was before or after the Act (*q*).

Construction of 15th section, with reference to re-settlement by father and son.

12. That if a father and son tenants for life and in tail re-settle the property, and by such re-settlement charge it with a portion for a younger son of the father, duty is payable by such younger son at 3 per cent. as on a succession derived from his brother. The charge is not an alienation under the 15th section (*r*).

Under first branch of 15th section descent is a derivative title.

13. That a title by descent is a derivative title within the meaning of the 1st branch of the 15th section. Thus, where a testator devised property to his wife for life with remainder to R.: R. died in 1844 intestate, and the wife died in 1859; it was held that the heir of R. must pay the same duty as R. would have been liable to, if living (*s*). It will be observed that the words "not conferring a new succession" are not inserted in the first branch, and it is apprehended that if R. in the above case had died after the Act came into operation, the devolution to his heir would have been a new succession, and duty at 1 per cent. only payable.

Duty where alienor dies before falling

14. That where a succession is aliened and falls into possession after the death of the alienor, duty under section 15 is

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(*p*) Attorney-General *v.* Sibthorpe, 3 H. & N. 424; Lord Braybrooke *v.* Attorney-General, 9 H. of L. Ca. 150; Attorney-General *v.* Floyer, 31 L. J. Ex. 404. See also Attorney-General *v.* Baker, 4 H. & N. 19.

(*q*) Lord Braybrooke *v.* Attorney-General, *ubi suprà;* Commissioners of Inland Revenue *v.* Harrison, L. R. 7 H. L. 1; Le Marchant *v.* Commissioners of Inland Revenue, L. R. 10 Exch. 292.

(*r*) Attorney-General *v.* Cecil, L. R. 5 Exch. 263.

(*s*) Attorney-General *v.* Rushton, 33 L. J. Ex. 184. But see Attorney-General *v.* Littledale, L. R. 5 Ex. 275; S. C. *ib.* 5 H. L. 290.

in of succession.

at same rate as if alienor had survived the falling into possession (*t*).

On death of reversioner before Act, legacy duty payable.

15. That where the original reversioner under a settlement of personalty has died before the Act, having by will bequeathed the reversion, and such reversion falls into possession after the Act, legacy duty under the will of the reversioner is payable, but no succession duty (*u*).

After alienation by tenant for life and in remainder, if purchaser dies and trustee or devisee pays duty, no further duty payable on falling in of succession.

16. That if A., tenant for life, and B., tenant in remainder, join in conveying the fee simple to C. as purchaser, and C. dies before A., having devised to D. in fee, D. pays duty on his succession from C., but is not liable to further duty on the death of A. (*x*).

Construction of sect. 18 exempting persons who have paid legacy duty from paying succession duty "on the same acquisition of the same property."

17. That sect. 18 exempting persons who have paid legacy duty from the payment of succession duty in respect of the same acquisition of the same property applies only where the same person is called on to pay twice over; consequently, in a case where personal property was given by a testator who died in 1816 to A. for life with remainder as she should appoint, and A. paid legacy duty on the absolute interest, and afterwards appointed to her nieces, it was held on the death of A. that the nieces must pay succession duty as on a succession derived from the testator, notwithstanding the payment of the legacy duty by A. (*xx*).

Construction of 21st section as to competency to dispose.

18. That the competency to dispose by will referred to in the 21st section relates to the quantity of interest, and not to the personal capacity of the individual, and consequently the circumstance that the person becoming entitled to the succession and dying before all the instalments of duty are payable, was insane or a *feme covert*, does not exempt the estate of such person from the remaining instalments (*y*). And a tenant in tail who disentails, and thus acquires the fee, and afterwards dies before all the instalments have become payable, is not within the exemption (*z*).

Construction of 22nd

19. That the term "necessary outgoings" in section 22 does

(*t*) Sol.-Gen. *v.* Law Reversionary Interest Society, L. R. 8 Ex. 234.

(*u*) Attorney-General *v.* Littledale, L. R. 5 H. L. 290; *Re* Chapman's Trusts, 2 H. & M. 447.

(*x*) *Re* Cooper & Allen's Contract, 4 Ch. D. 802.

(*xx*) Attorney-General *v.* Mitchell, 6 Q. B. D. 548.

(*y*) Attorney-General *v.* Hallett, 2 H. & N. 368.

(*z*) Attorney-General *v.* Lord Lilford, 34 L. J. Ex. 44; 2 L. R. H. of L. 63.

not include the property-tax, nor the cost of collecting rent during the absence of the owner abroad, nor the expenses of management incurred by trustees under a power of management conferred on them by the will (*a*).

section as to "necessary outgoings."

20. That mortgages made by a tenant for life and remainderman under a joint power of appointment reserved to them are incumbrances created by the remainderman within the meaning of the 34th section, and consequently that the latter is not entitled to any deduction in respect of them (*b*).

Construction of 34th section as to allowance for incumbrances.

21. That the term "annual value" in the 26th section means present actual annual value, and that such value, and not possible or prospective annual value, is the basis on which succession duty is to be calculated. Consequently, where at the time when the succession accrued land was stated to be incapable of being sold or let profitably as building land, or of being used productively for agricultural or other purposes, and the Crown admitted such statement to be true, it was held by the House of Lords that no duty was payable, although the land was a few years afterwards sold at a high price as building land. It was intimated, however, by some of the law lords in giving judgment, that, but for the admission by the Crown the property would probably have been held to have a present annual value at the time when the succession accrued; for that, if it was saleable at all, the annual value might have been treated at 3 per cent. on the purchase-money, or such an annuity as might have been purchased with the amount for which the land would sell (*c*).

Construction of term "annual value" in 26th section.

22. That a certificate from the Inland Revenue Office that the duty has been paid, discharges the land, and the purchaser can require no further evidence on the subject (*d*).

Certificate of Inland Revenue Office conclusive.

The following Table is annexed to the Succession Duty Act, and is applicable for the purpose of legacy duty as well as succession duty:

(*a*) *In re* Elwes, 3 H. & N. 719; S. C. 28 L. J. Ex. 46; *Re* Earl Cowley, L. R. 1 Ex. 288.

(*b*) *Re* Peyton, 7 H. & N. 265; Attorney-General *v.* Lorton, 11 Ir. Com. Law Rep. 429.

(*c*) Attorney-General *v.* Earl of Sefton, 34 L. J. Ex. 98.

(*d*) Earl Howe *v.* Earl of Lichfield, L. R. 2 Ch. App. 155.

The Value of an Annuity of £100 per Annum held on a Single Life.

Years of Age.	Values.			Years of Age.	Values.		
	£	s.	d.		£	s.	d.
Birth.	1,892	8	6	48	1,300	9	6
1	1,906	13	0	49	1,271	19	6
2	1,919	2	0	50	1,242	19	6
3	1,926	8	0	51	1,213	17	0
4	1,928	16	0	52	1,185	14	0
5	1,926	19	6	53	1,157	17	6
6	1,921	12	0	54	1,130	13	0
7	1,913	4	6	55	1,103	18	0
8	1,902	16	6	56	1,077	10	0
9	1,890	19	6	57	1,051	10	0
10	1,878	3	0	58	1,025	10	0
11	1,864	7	0	59	999	1	0
12	1,849	12	0	60	972	1	0
13	1,833	18	6	61	943	15	6
14	1,817	7	6	62	914	2	0
15	1,800	8	6	63	883	6	0
16	1,783	13	0	64	852	9	0
17	1,767	16	0	65	821	12	6
18	1,753	5	6	66	790	15	0
19	1,740	11	0	67	761	19	0
20	1,729	9	6	68	733	8	6
21	1,719	17	0	69	705	4	0
22	1,713	1	0	70	677	9	0
23	1,706	16	6	71	650	8	0
24	1,700	11	6	72	623	19	6
25	1,694	0	0	73	597	7	6
26	1,686	14	6	74	569	13	0
27	1,677	5	6	75	541	0	6
28	1,667	1	0	76	511	9	6
29	1,656	1	0	77	477	17	0
30	1,644	7	6	78	444	9	6
31	1,632	0	0	79	412	9	6
32	1,619	0	6	80	381	3	0
33	1,605	4	0	81	350	14	6
34	1,590	9	6	82	321	14	6
35	1,574	17	6	83	292	10	0
36	1,558	9	6	84	263	2	0
37	1,541	10	6	85	234	18	6
38	1,524	0	0	86	207	16	0
39	1,506	1	6	87	184	11	6
40	1,487	10	0	88	164	17	6
41	1,468	4	0	89	148	7	0
42	1,447	11	6	90	133	9	0
43	1,426	2	0	91	122	16	0
44	1,403	10	0	92	107	7	0
45	1,379	14	6	93	93	3	0
46	1,354	16	6	94	79	8	6
47	1,328	2	6	95	64	11	0

No. I.

WILL *giving all the testator's property to his* WIFE.

OF ALL TO WIFE.

THIS IS THE LAST WILL of me, A. B., of, &c. I give all my property to my dear wife Mary, and appoint her the sole executrix of this my will. IN WITNESS whereof I have set my hand to this my will the —— day of ——, 18——.

(*Signature of testator.*)

Signed by the above named A. B., as his last will in the presence of us, both being present at the same time, who in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

(*Names and addresses of witnesses.*)

No. II.

WILL *of* REAL (*a*) *and* PERSONAL ESTATE; BEQUEST *of* PLATE, FURNITURE, &c., *and a* LEGACY *to* WIFE. BEQUESTS *of other* LEGACIES; DEVISE *and* BEQUEST *of residue to* TRUSTEES *upon trust for* SALE *and* CONVERSION; TRUSTS *of moneys to pay* FUNERAL *and* TESTAMENTARY *expenses and* DEBTS, *and to* INVEST *residue and to vary securities.* TRUSTS *of* RESIDUE *to pay the income to* WIFE *for life, and after her death for* TESTATOR'S CHILDREN (*b*); PROVISO *that* ISSUE *of deceased children shall take their* PARENT'S SHARE; POWER *to postpone sale and conversion and to* MANAGE *real estate while unsold* (*bb*).

OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN

I, A. B., of, &c., HEREBY REVOKE all former wills and testamentary dispositions made by me, and declare this to be my last

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(*a*) Even if the testator has no real estate at the time of making his will it is desirable to extend the devise to real estate, because it is possible that he may acquire some before his death.

(*b*) For variations of the trusts for wife and children, see next Precedent.

(*bb*) A devise of trust and mortgage estates is rendered inoperative by

Devise of trust and

Appointment of executors, trustees, and guardians.

Gift of plate, &c., to wife, and a legacy.

Other legacies.

Devise and bequest of residue of real and personal estate to trustees, in trust to sell, and convert and invest proceeds.

To pay income to wife for life, and

will and testament. I appoint C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will: (*c*) AND I APPOINT my dear wife —— during her life and after her death my trustees to be the guardian and guardians of my infant children: I GIVE all my plate, linen, china, glass, books, pictures, prints, wines, liquors, furniture, and other household effects, and all my carriages and horses to my said wife —— absolutely, and I ALSO GIVE to her the sum of £——, to be paid within one calendar month after my decease. I BEQUEATH the following legacies, that is to say (*legacies*): I DEVISE AND BEQUEATH all my real and personal estate not hereby otherwise disposed of, unto my trustees: UPON TRUST that my trustees shall sell (*cc*), call in, and convert into money the same or such part thereof as shall not consist of money, and shall with and out of the moneys produced by such sale, calling in, and conversion, and with and out of my ready money, pay my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will or any codicil hereto, and shall with the consent in writing of my said wife during her life, and after her decease at the discretion of my trustees, invest the residue of the said moneys, with power for my trustees from time to time with such consent or at such discretion as aforesaid to vary such investments, AND SHALL stand possessed of the said residuary trust moneys, and the investments for the time being representing the same (hereinafter called the residuary trust funds), IN TRUST to pay the income thereof to my said wife during her life, and after her decease, IN TRUST (*d*) for all my

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mortgage estates now omitted.

sect. 30 of the Conveyancing Act, 1881, and will be therefore always omitted.

Convenience of making the same persons executors and trustees.

(*c*) It is generally desirable to appoint the same persons to be executors and trustees. If different persons are appointed, it is the duty of the executors to get in the personal estate and apply it in due course of administration, and when all the debts and legacies are paid to hand over the residue to the trustees, whose functions then commence. If the personalty is insufficient for payment of debts and legacies, the trustees and not the executors would have to raise the deficiency out of the real estate. This separation of functions is manifestly inconvenient.

(*cc*) As the proceeds of a sale are applicable in the first place in payment of debts, &c., it is apprehended that the wife's consent to a sale will not be necessary under the Settled Land Act, 1882, s. 63, and sub-s. (2) of s. 56, but it would be prudent, in order to avoid any question on the point, to make her a party.

(*d*) If it is intended that the wife shall have a power of appointment among the children, the form of trusts No. 1 in the next Precedent should be substituted for those in the text.

children who being sons [have attained or (*e*)] shall attain the age of twenty-one years, or being daughters [have attained or (*e*)] shall attain that age, or [shall] marry under that age, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: [PROVIDED ALWAYS that if any child of mine shall die in my lifetime leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then and in every such case the last-mentioned child or children shall take (and if more than one, equally between them) the share which his, her, or their parent would have taken of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years] (*f*): AND I DECLARE that if any daughter [or granddaughter] of mine shall marry while an infant, the income of the share (if any) of the residuary trust funds to which she shall for the time being be entitled in possession under this my will may be paid to her during her infancy, and her receipt shall be a sufficient discharge for the same (*ff*). AND I ALSO DECLARE that my trustees (*g*) may, with the consent in writing of my said wife during her life, and after her decease at their own discretion, raise any part or parts not exceeding together one moiety of the expectant share of any child [or grandchild] of mine under this my will, and apply the same for his or her advancement, preferment, or benefit, as my trustees shall think fit: AND I ALSO DECLARE that my trustees may postpone the sale and conversion of my real and personal estate, or any part thereof, for so long as they shall think fit (*h*), and that the rents, profits,

OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN.

after her death, for children equally.

Proviso that share of child dying before testator shall go to his or her children.

Direction as to shares of infant married daughters.

Advancement clause.

Power to postpone sale and conversion.

(*e*) If all the children are under twenty-one at the date of the will, the words "have attained or" may be omitted.

(*f*) It seems desirable as a general rule to provide for the case of a child of the testator dying in his lifetime leaving issue, as otherwise if such event should happen, it would be necessary for the testator to make a codicil. But if the relative ages of the testator and his children are such that it is improbable that any child dying before the testator will leave issue, or the provision is otherwise not desired, the words in brackets may be omitted.

(*ff*) See p. 229, *suprà*,

(*g*) A maintenance clause is unnecessary. See Conveyancing Act, 1881, s. 43.

(*h*) In cases where the nature of the testator's property renders it advisable, the following words may be added:—

"Notwithstanding that the property the sale or conversion

OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN.

and income to accrue from and after my decease of and from such part of my estate as shall for the time being remain unsold and unconverted, shall after payment thereout of all incidental expenses and outgoings be paid and applied to the person or persons and in the manner to whom and in which the income of the moneys produced by such sale and conversion would for the time being be payable or applicable under this my will if such sale and conversion had been actually made: [AND I ALSO DECLARE (*i*) that my trustees may let any hereditaments for the time being remaining unsold either from year to year, or for any term of years, at such rents and subject to such covenants as they shall think fit, and may accept surrenders of leases and tenancies, fell timber and other trees standing on the said hereditaments, whether for sale, repairs, or otherwise, and generally may manage the same in such manner as they shall think fit, and the proceeds of any timber sold by my trustees shall be considered as income, and paid and applied accordingly]: AND I ALSO DECLARE that all moneys liable to be invested under this my will may be invested (*k*) in or upon any stocks, funds, or securities of

Power to manage unsold property

Investment clause.

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whereof shall be so postponed, may be of leasehold tenure, or may be otherwise of a perishable or wearing-out nature, and if any part of my estate shall be of a reversionary nature, the same shall not be sold or converted into money until it falls into possession, unless my trustees shall think it probable that a loss will arise to my estate by postponing the sale and conversion thereof, and I declare that the rents, &c." (*as above*).

(*i*) The power to manage unsold property may be omitted if the testator has no property to which it is applicable.

(*k*) One of the following forms of an investment clause may, if desired, be substituted for that in the text:—

1. In or upon any stocks, funds, or securities of or guaranteed by the Government of the United Kingdom or any British colony or dependency [or any foreign state], or the debentures, securities, stocks, or shares of any railway or other company in the United Kingdom or India, or upon real or leasehold securities in England or Wales [*or* real or heritable or leasehold securities in the United Kingdom], such leasehold securities being held for a term whereof sixty years shall be unexpired at the time of such investment, or upon the security of any life

OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN.

Power to lend on contributory mortgages.

Provision as to appointment of new trustees.

or guaranteed by the Government of the United Kingdom or of any British colony or dependency, or in stock of the Bank of England, or the debentures or debenture stock or guaranteed or preference stock or shares of any railway or other company in Great Britain or India incorporated by Act of Parliament or Royal Charter, and paying a dividend on its ordinary stock or shares, or upon real or leasehold securities in England or Wales, but not elsewhere, such leasehold securities being held for a term whereof sixty years at least shall be unexpired at the time of such investment: AND in lending money on any mortgage security my trustees may accept whatever title or evidence of title shall appear to them sufficient, and in particular may in the case of leasehold securities waive the production of the lessor's title, without being answerable for any loss arising thereby, and my trustees may release any part of the property comprised in any mortgage security if satisfied that the remaining property is a sufficient security for the money owing thereon [AND I ALSO DECLARE that my trustees may if they think fit lend money on any such security as aforesaid in conjunction with money advanced by any other person or persons by way of contributory loan, and in such case the security may be taken in the joint names of the several contributories or any two or more of them, or in the joint names of any two or more persons to be nominated by the several contributories or such other arrangement may be made in relation thereto, as my trustees may think fit]. AND I ALSO DECLARE (*l*) that the power of appointing new trustees

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interest in real or personal property, together with a policy or policies of assurance on the life of the person for whose life such interest shall be holden: And in lending money, &c. (*as above*).

2. In or upon any stocks, funds, or securities authorised by law as investments for trust funds, or the debentures or debenture stocks or the guaranteed or preference stocks, or shares of British or Indian Railway Companies.

(*l*) It is considered that the statutory power may safely be relied on in ordinary cases, but if it is preferred to insert in the deed an express power, the following may be substituted for the clause in the text:—

Power to appoint new trustees.

AND I DECLARE that if the trustees hereby appointed or any of them shall die in my lifetime, or if they or any of them or

OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN.

conferred by statute shall for the purposes of this my will be vested in my said wife during her life (*m*).

In witness, &c.

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any future trustee or trustees of this my will shall die, or go to reside abroad, or shall desire to retire from or refuse or become incapable to act in the trusts of this my will before the same shall be fully performed, then and in every such case it shall be lawful for my said wife during her life, and after her decease for the continuing trustees or trustee for the time being of this my will, or if there shall be no continuing trustee, then for the retiring or refusing trustees or trustee, or the executors or administrators of the last acting trustee, to appoint any other person or persons to be a trustee or trustees, in the place of the trustee or trustees so dying, or going to reside abroad, or desiring to retire, or refusing or becoming incapable to act as aforesaid, with liberty upon any appointment to alter the number of trustees, but so that, immediately after each such appointment, the number shall be not less than two: And upon every such appointment the trust premises shall be so transferred as to become vested in the new trustee or trustees, either jointly with the continuing trustee or trustees or solely as the case may require: And every such new trustee (as well before as after the said trust premises shall have become vested in him) shall have all the powers and authorities of the trustee for whom he shall be substituted.

(*m*) If either of the trustees is a solicitor, add :—

"And I declare that the said C. D. and any future trustee of this my will who may be a solicitor, shall be entitled to charge my estate for all business done by him in relation to my estate, or the trusts of this my will, in the same manner as he would have been entitled to charge my executors and trustees for the same if he had not been himself an executor or trustee, but had been employed by my executors and trustees to do such business as their solicitor."

No. III.

TRUSTS *of a* RESIDUE *for* WIFE *and* ISSUE, *being variations of the trusts in the last Precedent.* (1.) *Where the* WIFE *takes a* LIFE INTEREST *with a* POWER *of* APPOINTMENT *among the* ISSUE; (2.) *where the* WIFE *takes an interest during* WIDOWHOOD *only, and a* POWER *of* APPOINTMENT *among the* ISSUE; (3.) *where the* WIFE *takes an interest during* WIDOWHOOD *in a* MOIETY *only and if she* MARRIES *again an* ANNUITY *during the rest of her life;* (4.) *where the* RESIDUE *is* DIVIDED *among the* CHILDREN *and the* ISSUE *of* DECEASED CHILDREN *per stirpes;* (5.) *where the* VESTING *of the shares of* CHILDREN *and* GRANDCHILDREN *is* POSTPONED *until the age of* TWENTY-FIVE.

FOR WIFE AND CHILDREN.

1. IN TRUST to pay the income thereof to my said wife during her life and after her decease, IN TRUST for my children or any of them or any of their issue as my said wife shall by any deed or deeds or by her will appoint, and in default of such appointment and so far as any such appointment shall not extend, IN TRUST for all my children who being sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or shall marry under that age, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: [PROVIDED ALWAYS that if any child of mine shall die in my lifetime leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then and in every such case, and in default of any appointment by my said wife to the contrary, the last-mentioned child or children shall take (and if more than one, equally between them) the share which his, her, or their parent would have taken of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years (*a*):] PROVIDED ALSO that no child [or grandchild] of mine who or any of whose issue shall take any part of the residuary

Trust to pay income to wife for life, then for issue as she shall appoint by deed or will, and in default of appointment for children equally, sons at 21, and daughters at 21 or marriage.

Proviso that share of child dying before testator shall go to his or her children.

Hotchpot clause.

(*a*) See note (*f*), p. 449.

trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the residuary trust funds without bringing the share or shares appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly, unless my said wife shall by any such appointment as aforesaid direct the contrary. (*Direction as to shares of infant married daughters, and Advancement clause, suprà*, p. 449.)

Trust to pay income to wife for widowhood, and afterwards for children or issue as she shall during widowhood by deed, and if she does not marry again by will appoint, and in default of appointment for children equally.

2. In trust to pay the income thereof unto my said wife during her life if she shall so long remain my widow, and from and after her decease or second marriage (which shall first happen), In trust for my children or any of them or any of their issue as my said wife shall during her widowhood by any deed or deeds, or, if she shall not marry again, by her will, appoint; and in default, &c. (*trusts for children; proviso that share of child dying before testator shall go to his or her children; hotchpot clause, as above*), And I declare that my trustees may with the consent of my said wife during her widowhood, and afterwards at their own discretion raise, &c. (*Direction as to shares of infant married daughters, and Advancement clause, suprà*, p. 449.)

As to moiety to pay income to wife during widowhood, and if she marries again, annuity to be paid to her.

3. And shall stand possessed of the said residuary moneys and the investments representing the same (hereinafter called "the residuary trust funds"), upon the trusts following (that is to say), as to one equal moiety thereof, In trust to pay the income of the said moiety to my said wife during her life, if she shall so long remain my widow, and if she shall marry again, then from and after her second marriage, In trust out of the said income to pay to my said wife during the rest of her life an annuity of £—— by equal half-yearly payments, the first payment thereof to be made at the expiration of six calendar months from the date of such marriage, And as to the said moiety from and after the decease or second marriage of my said wife, and in the event of such second marriage subject to the said annuity, and as to the other moiety of the residuary trust funds from and after my decease, In trust for all, &c. (*Trusts for children, as above.*)

Subject thereto trust for children equally.

Trusts for children and grandchildren (the issue of deceased children) *per stirpes*.

4. In trust for such children of mine living at my decease, and such grandchildren of mine (being the issue of my deceased son —— or of any other child of mine who may die in my lifetime) as being male [have attained or] shall attain the age of

twenty-one years, or being female [have attained or] shall attain that age or shall marry under that age, the objects of this trust to take in equal shares, except that the issue of a deceased child of mine shall take between them the share only which their parent would have taken if he or she had survived me, and attained the age of twenty-one years.

FOR WIFE AND CHILDREN.

5. IN TRUST for such children of mine surviving me, and such grandchildren of mine (being the issue of any child or children of mine dying in my lifetime) as being male shall attain the age of twenty-five years, or die under that age leaving issue, or being female shall attain the age of twenty-five years or marry under that age, the objects of this trust to take in equal shares, except that the issue of a deceased child of mine shall take between them the share only which their parent would have taken if he or she had survived me: PROVIDED ALWAYS and I declare (*a*) that during the minority of any child or grandchild of mine who if of the age of twenty-five years would for the time being be entitled in possession to a share of the residuary trust funds under the foregoing trusts, my trustees may apply the whole or any part of the income of the expectant share of such minor for or towards his or her maintenance and education with liberty to pay the same to the guardian or guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof; and shall accumulate the residue (if any) of the said income by investing the same and the resulting income thereof to the intent that such accumulations shall be added to the principal share from which the same shall have proceeded, and follow the destination thereof, but my trustees may at any time resort to the accumulations of any preceding year or years and apply the same for or towards the maintenance and education of any person for the time being presumptively entitled thereto: PROVIDED ALSO and I declare that every child or grandchild of mine who has attained the age of twenty-one years, and who if he or she had attained the age of twenty-five years would be entitled in possession to a share of the residuary trust funds under this my will, shall be entitled to receive the whole income of his or her expectant share until

Trusts for children and grandchildren *per stirpes*—to vest at 25.

Maintenance clause.

Accumulation.

Between ages of 21 and 25, whole income to be payable.

(*a*) Sect. 43 of the Conveyancing Act, 1881, does not apply where a child's share does not vest until the age of twenty-five years.

And direction as to shares of infant married daughters.

the same shall have become vested or he or she shall previously die: and if any daughter or granddaughter of mine shall marry while an infant, the income of the share (if any) of the residuary trust funds to which she shall for the time being be entitled in possession under this my will, may be paid to her and her receipt shall be a sufficient discharge for the same: PROVIDED ALSO and I declare that, &c. (*Advancement clause, suprà*, p. 449.)

No. IV.

OF ALL TO WIFE AND CHILDREN.

WILL *giving all the testator's property to his* WIFE *for life and then to his* CHILDREN *(a very short form)* (*a*).

Appointment of executors, trustees and guardians.

THIS IS THE LAST WILL of me, A. B., of, &c. I appoint C. D., of, &c., and E. F., of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will: and I appoint my wife during her life and after her death my trustees, to be the guardian and guardians of my infant children: I GIVE all my property unto my trustees, IN TRUST to convert into money the same, and invest the proceeds in any investments authorised by law for trust funds, with power to vary such investments at their discretion: AND to pay the income of the proceeds to my wife during her life and after her death to divide the corpus equally among all my children who attain the age of twenty-one years, or marry under that age (*b*), with power for my trustees, with the consent of my said wife, if living, and if not, at their own discretion to raise the whole or any part of the presumptive share of any infant child and to apply the same for his or her advancement or benefit.

Gift of all the property to trustees to convert, and pay the income to wife, and after her death divide corpus among children.

IN WITNESS, &c.

(*a*) Sometimes a Solicitor is called on to make a will for a person *in extremis*, when there is not time for the more elaborate trusts and provisions contained in Precedent No. II. In such a case the above Precedent may be used.

(*b*) It is not very usual to make sons' shares vest on marriage under 21, but it is sometimes done, and meets the possible case of a son so marrying and dying under 21 leaving issue, in which case the issue would otherwise be unprovided for.

No. V.

WILL *of a* WIDOWER *giving all his* PROPERTY *in* TRUST *for his* CHILDREN *who are all* ADULTS.

FOR ADULT CHILDREN.

THIS IS THE LAST WILL of me, A. B., of, &c. I appoint my sons, C. D., of, &c., and E. F., of, &c., to be the executors and trustees of this my will, and I give to them all my property, IN TRUST to convert the same into money by sale or otherwise, and to divide the proceeds (after paying thereout my funeral and testamentary expenses and debts) among all my children in equal shares.

Appointment of executors.

Gift of all the property to the executors in trust to convert and divide among children.

IN WITNESS, &c.

No. VI.

WILL *of a* WIDOWER, *giving all his* PROPERTY *in* TRUST *for his* CHILDREN *equally*, SOME *of whom are* UNDER AGE.

FOR CHILDREN, SOME BEING INFANTS.

THIS IS THE LAST WILL of me, A. B., of, &c. I appoint C. D., of, &c., and E. F., of, &c. (hereinafter called "my trustees") to be the executors and trustees of this my will and the guardians of my infant children: I GIVE, &c. (*legacies*): AND I give all my property not hereby otherwise disposed of unto my trustees, IN TRUST to convert the same into money by sale or otherwise, and to divide the proceeds (after paying my funeral and testamentary expenses and debts and the legacies hereby bequeathed) among all my children, who being sons attain the age of twenty-one years, or being daughters attain that age or marry, in equal shares (*Proviso that share of child dying before testator shall go to his or her children, suprà*, p. 449): AND with respect to the expectant shares of my infant children [or grandchildren] I direct my trustees to invest the same in any investments authorised by law for trust funds or upon the debentures or debenture stock or guaranteed or preference stock of British or

Appointment of executors, trustees and guardians.

Legacies.

Gift of residuary property to trustees in trust to convert and divide proceeds among children equally.

Expectant shares of infant children to be invested.

FOR CHILDREN, SOME BEING INFANTS.

Power of advancement.

Power to postpone conversion.

Indian railway companies (*a*), with power to vary the investments thereof from time to time at their discretion: AND I empower my trustees to raise any part not exceeding one moiety of the presumptive share of any infant child [or grandchild], and to apply the same for his or her advancement or benefit, as my trustees shall think fit: AND I ALSO EMPOWER my trustees to postpone the sale and conversion of any part of my estate for so long as they shall think fit, and the income of unconverted property shall from the time of my death go in the same manner as the income of the proceeds thereof would have been applicable if the same had been converted.

IN WITNESS, &c.

No. VII.

OF REAL AND PERSONAL ESTATE FOR WIDOW AND CHILDREN.

WILL *of* REAL *and* PERSONAL *estate;* BEQUEST *of* JEWELS, *&c., to* WIFE; BEQUEST *of* PLATE, BOOKS, *&c., to trustees for* WIFE *during* WIDOWHOOD, *and afterwards for testator's* ELDEST SON; BEQUEST *of* FURNITURE, *&c., to trustees for* WIFE *during* WIDOWHOOD, *and afterwards to sink into* RESIDUE; DEVISE *and* BEQUEST *of* RESIDUE *of* REAL *and* PERSONAL *estate upon trust to sell and convert and invest proceeds;* INCOME *for* WIFE *during* WIDOWHOOD, *and afterwards for* CHILDREN *equally;* SHARE *of one of the* SONS *to be* SETTLED *on him and his* CHILDREN, *giving him a* LIFE INTEREST *determinable on* BANKRUPTCY *or* ALIENATION, *and a* POWER *to give a* LIFE INTEREST *to his* WIFE; POWER *to the* TRUSTEES *to raise the whole or any part of the* CAPITAL *for the* SON *at their discretion;* EXPRESSION *of wish that* ESTATE *shall not be administered in* CHANCERY, *and* DECLARATION *as to* COSTS *in case of* CHANCERY ACTION.

I, A. B., of, &c., hereby revoke all former wills and testamentary dispositions, and declare this to be my last will and testa-

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(*a*) For a fuller power of investment, see Precedent No. II., *suprà*, p. 450.

ment: I appoint, &c. (*Appointment of executors, trustees, and guardians, suprà*, p. 448): I GIVE and confirm to my dear wife all the jewels, trinkets, and personal ornaments worn or used by her in my lifetime; and I also give to her all my wines, liquors, and other consumable stores, and all my horses and carriages, for her absolute use and benefit: I GIVE all my plate and plated articles, books, pictures, and prints, unto my trustees, IN TRUST to permit my said wife to use and enjoy the same during her life, if she shall so long continue my widow, and from and after her decease or second marriage (which shall first happen), IN TRUST for such son of mine as shall first attain the age of twenty-one years: I GIVE my leasehold dwelling-house, being No. ——, &c. (*describing it*), and all my furniture and household effects being in or about or appropriated or belonging to the said dwelling-house, other than and not being plate or plated articles, books, pictures, or prints, unto my trustees, IN TRUST to permit my said wife to occupy the said dwelling-house and to use and enjoy the said furniture and household effects during her life if she shall so long continue my widow, she paying the ground rent, and all rates, taxes, and outgoings payable in respect of the said dwelling-house, and observing and performing the covenants contained in the lease under which the same is or at my decease shall be held: AND I DECLARE that from and after the decease or second marriage of my said wife (which shall first happen), the said dwelling-house, furniture, and household effects, shall fall into and form part of my residuary estate: AND I DIRECT that my trustees shall, as soon as conveniently can be after my decease, cause an inventory to be made of the plate, plated articles, books, pictures, and prints, and also the furniture and other household effects hereinbefore bequeathed for the benefit of my said wife during her widowhood, and that one copy of such inventory be signed by my trustees, and delivered to my said wife, and that another copy thereof be signed by my said wife, and retained by my trustees: AND I DECLARE that after the delivery to my said wife of the several chattels and effects, the use whereof is hereinbefore given to her during her widowhood, my trustees shall not be obliged to see to the preservation of the same chattels and effects or any of them, nor be answerable for any loss or injury thereof which may happen during the widowhood of my said wife: AND I ALSO DECLARE that my

Bequest to wife of jewels, &c.

Bequest of plate, &c., to trustees for wife during widowhood, and afterwards for eldest son attaining twenty-one.

Bequest of leasehold house and furniture to trustees for wife during widowhood, she paying rent, &c.,

and afterwards to fall into residue.

Trustees to make an inventory.

Trustees not to be bound to see to preservation of chattels.

Trustees not

OF REAL AND PERSONAL ESTATE FOR WIDOW AND CHILDREN.

to be bound to see that wife pays rent, &c.

Power for trustees with consent of wife to sell house, furniture, &c.

Devise and bequest of residue.

Trusts of residuary proceeds for wife

during widowhood, afterwards for children attaining twenty-one, &c.

Proviso that share of one of the sons shall be retained by the trustees.

In trust to pay the income to the son during his life or until bankruptcy or alienation,

and in the

trustees shall not be bound to see that my said wife duly pays the rent and observes and performs the covenants and conditions reserved by and contained in the lease of my said dwelling-house, nor shall they be liable for or in respect of any forfeiture or loss which may arise by reason or in consequence of the non-payment by my said wife of the said rent, or the breach by her of any of the said covenants and conditions: And I also declare that it shall be lawful for my trustees at any time or times during the widowhood of my said wife with her consent in writing, to sell the said dwelling-house and also the said furniture and other household effects bequeathed therewith, or any of them, or any part thereof respectively, and in such case the moneys to arise from such sale shall sink into and form part of my residuary personal estate: I give, &c. (*Devise and bequest of the residue of testator's real and personal estate to trustees, upon trust to sell and convert same, and invest proceeds, with power to vary investments, suprà*, p. 448): And shall stand possessed of the said residuary trust moneys and the investments for the time being representing the same (hereinafter called the residuary trust funds), In trust to pay the income thereof to my said wife during her life if she shall so long continue my widow, and from and after her decease or second marriage (which shall first happen), In trust for all my children who being sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or marry, but subject as to the share of my son D. B. to the trusts hereinafter declared concerning the same (*Proviso that issue of children dying before testator shall take parent's share, suprà*, p. 449): Provided always, and I declare that if my son D. B. shall survive me the trustees shall retain his share of and in the residuary trust funds, and hold the same upon the trusts following (that is to say): In trust to invest or continue the investments thereof with power to vary such investments, and to pay the income of the said share and the investments representing the same unto the said D. B. until he shall assign, charge, or otherwise dispose of the said income or some part thereof, or become bankrupt or do or suffer something whereby the said income, if belonging absolutely to him, or some part thereof, would become payable to or vested in some other person (which of the said events shall first happen): And if the trust hereinbefore declared

OF REAL AND PERSONAL ESTATE FOR WIDOW AND CHILDREN.

event of cesser of life interest, in trust during rest of his life, to apply income for the maintenance of him and his wife and children, or some of them, at discretion of trustees, afterwards for children.

shall determine in the lifetime of the said D. B., then In trust during the remainder of the life of the said D. B. to pay and apply the income thereof for the maintenance and support or otherwise for the benefit of all or such one or more exclusively of the other or others of the said D. B. and his wife and issue for the time being (if any), or if he shall for the time being have no wife or issue living, then for the benefit of all or such one or more exclusively of the others or other of the said D. B. and his brothers and sisters, nephews and nieces for the time being, in such manner in all respects as my trustees shall in their uncontrolled discretion think fit, And from and after the decease of the said D. B., then In trust for all his children who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares, and if there shall be but one such child the whole to be in trust for that one child: And if there shall be no child of the said D. B. who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then In trust for my other children who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares: Provided always, that the said D. B. may by deed or will appoint that the whole or any part of the income of the said share shall, after his death, be paid to his widow (if any) during her life, or for any less period: Provided also, that notwithstanding the foregoing trusts, my trustees may at any time or times, if they shall in their uncontrolled discretion think fit so to do, transfer or pay the whole or any part of the capital of the share of the said D. B., or the trust funds representing the same unto the said D. B., for his absolute use, or otherwise apply the same for his benefit, or they may, with the consent of the said D. B., revoke by deed all or any of the trusts hereinbefore declared, and declare any new or other trusts of or concerning the said share or any part thereof (*Direction as to shares of infant married daughters or granddaughters, power of advancement, power to postpone sale and conversion, and investment clause, suprà*, pp. 449 *to* 451): Provded always, and I declare that it is my particular wish (*b*) that my estate shall not be

Power to give life interest to widow.

Power to trustees to raise the whole or any part of legacy and pay it to son absolutely, or (with his consent) to alter trusts.

Expression of wish that estate

(*b*) It seems to be the practice of the Court to allow any person beneficially interested in the residue of a testator's estate, and if a beneficiary is an infant, any person who chooses to call himself the next friend of such

Observations on practice of Court allowing

OF REAL AND PERSONAL ESTATE FOR WIDOW AND CHILDREN.

shall not be administered in Court.

administered in the High Court of Justice, and in order to avoid (as far as I can) the necessity of any application to the said Court, I DECLARE that (in addition to all powers conferred by law on executors and trustees) my executors or executor for the time being and my trustees respectively shall have full power to settle all questions which may arise in the management and administration of my estate, or any trust property held under this my will, and also all questions as to the proper construction of this my will, or any clause herein contained, and all other questions whatsoever which may arise in relation to my estate or any trust property held under this my will, in such manner as they or he shall in their or his discretion under the advice of counsel or otherwise think fit. AND I FURTHER DECLARE that if any person beneficially interested under this my will shall either himself or herself, or being an infant or otherwise under disability shall by his or her next friend, institute any suit or other proceeding in the said Court for the administration of my estate, or of any trust fund held under this my will, and shall not allege and prove to the satisfaction of the Court, that the executors or trustees, exe-

actions for administration of any person calling himself next friend of an infant.

infant, to institute a suit against the executors and trustees for the administration of the estate, *i.e.*, to have the accounts taken by the Court, and the expense of such suit will, in most cases, be paid out of the estate. Such suits are often attended with heavy expense, and it is a serious hardship that when a testator has appointed persons in whom he feels confidence to manage and wind up his affairs, the management may at any time be taken out of their hands, and the estate subjected to the more costly administration of the Court at the instance of one only of several persons beneficially interested, or even in the case of an infant at the instance of any person calling himself a next friend, but who may be, and often is, a stranger to the family, the nominee of a solicitor to whom the institution of the suit is a source of profit.

It is suggested that if a testator wishes, as far as possible, to prevent his estate being thrown into Chancery after his death, without sufficient cause, the above clause might have a useful effect. It may, perhaps, be objected to the clause that it is unfair to an infant who is helpless in the matter that his share should be made liable to the costs of a suit instituted by his assumed next friend; but, on the other hand, the fact that this will be the result, will probably help to deter even unscrupulous persons from undertaking the office of a next friend, and will also help to induce the Court to stop a suit so instituted on the ground of its not being for the interest of the infant.

It is conceived that there is no legal objection to the validity of the above clause. A condition forfeiting a legacy in case of the legatee taking any proceedings in relation to anything contained in the will has been held repugnant and void (Rhodes *v.* Muswell Hill Land Company, 29 Beav. 560); but the clause in question is of a very different nature.

cutor or trustee, against whom such suit is instituted, have or has been guilty of some wilful default or breach of trust, rendering such suit necessary to save my estate from loss, then and in such case the costs of such suit, or those costs which, in the absence of this clause, would be payable out of my estate generally, or out of the said trust fund, shall be paid exclusively out of the share or shares of the plaintiff or plaintiffs therein, and if more than one rateably and in proportion to the amount of their respective shares.

OF REAL AND PERSONAL ESTATE FOR WIDOW AND CHILDREN.

IN WITNESS, &c.

No. VIII.

WILL *of a* WIDOWER; DEVISE *and* BEQUEST *of* REAL *and* PERSONAL ESTATE (*except copyholds*) *to trustees in trust to sell and convert;* DEVISE *of* COPYHOLDS *to such* USES *as trustees shall* APPOINT *in exercise of trust for* SALE; TRUSTS *of* PROCEEDS *of sale and conversion, to pay* FUNERAL *and* TESTAMENTARY *expenses,* DEBTS, *and* LEGACIES, *and divide surplus between* CHILDREN *equally,* EXCEPT *that the share of* ELDEST SON *who has received an advance shall be reduced by the amount of such advance;* MARRIED DAUGHTER'S *share to be charged with sum covenanted to be paid by marriage settlement; Share of* INFANTS *to be invested for their benefit;* POWER *to sons to* PURCHASE *real estate at a* VALUATION; *Usual Powers and Provisions.*

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

I, A. B., of, &c., hereby revoke all former wills and testamentary dispositions, and declare this to be my last will and testament, &c.: I appoint (*Appointment of executors, trustees, and guardians, suprà*, p. 448). AND WHEREAS I have five children by my late wife C. B. deceased, viz., G. B., H. S. the wife of R. S., of, &c., I. B., K. B., and L. B., of whom the said G. B. and H. S. have attained the age of twenty-one years, and my other children

Recital that testator has five children.

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

That testator had paid money for benefit of eldest son.

That on daughter's marriage he had covenanted to pay a certain sum to trustees on his decease.

Devise of real and personal estate (except copyholds) to trustees.

Devise of copyholds to such uses as trustees shall appoint, and in default of appointment to use of trustees.

are under that age: And whereas I lately paid the sum of £800 in the purchase of a commission in the army for the said G. B.; And whereas, by the settlement made on the marriage of my said daughter H. S. with the said R. S., which settlement is dated the —— day of ——, I covenanted with —— (*names*), the trustees named in the said settlement, for the payment to them by my executors or administrators, within twelve calendar months after my decease, of the sum of £2000, with interest for the same after the rate of £4 per cent. per annum, computed from my decease, to be held by the said trustees upon the trusts therein declared for the benefit of my said daughter and her husband and issue: Now I hereby give and devise such part of my messuage, farm, and lands, situate at ——, as is of freehold tenure, and all other (if any) my real estate (except copyhold hereditaments, and except also estates vested in me as a trustee or mortgagee), and all my moneys, securities for money, and other personal estate and effects whatsoever unto my trustees: And I give and devise such part of the said messuage, farm, and lands as is of copyhold tenure, and all other (if any) my copyhold lands and tenements, To the use of such person or persons and in such manner (*a*) as my trustees shall within twenty-one years after my decease, by any deed or deeds, for the purpose of carrying into effect any sale made under the trust hereinafter in that behalf declared, appoint: And in default of and until such appointment I give and devise the same unto and to the use of the said C. D. in trust for my trustees and to be surrendered and disposed of as my trustees shall direct: And I declare that my trustees shall sell, call in, and convert into money the said real and personal estate (including the said copyhold hereditaments), hereinbefore devised and bequeathed or such part thereof as shall not

Declaration that trustees shall, out of proceeds of sale and conversion, pay debts,

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Proper form of devise of copyholds when a sale by trustees is intended.

(*a*) Where part of the testator's property is copyhold, and he intends that it shall be sold after his death, the proper course is to give to the trustees a power of appointment over it. Under such a power the trustees may on a sale appoint the property to the purchaser, who will be entitled to require admittance without the intermediate admittance of the trustees, and thus a single instead of a double fine is payable. If, however, an immediate sale is not contemplated, there is no advantage in the plan, because the lord of the manor will be entitled at any time before a sale to require some one to be admitted, and in default of such admittance to seize the land *quousque* for want of a tenant. As the fine payable on the admission of joint tenants exceeds that payable on the admission of a single tenant, the limitation in default of appointment is in the text to one of the trustees in trust for all of them.

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

and hold residue in trust for children, so that eldest son's shall be less by amount advanced to him than the share of the others.

Proviso that daughter's share shall be exclusively charged with sum covenanted to be paid to her trustees.

Accruer clause.

Proviso that issue of children dying before testator shall take their parent's share.

Declaration that shares of infants shall be invested.

consist of money, and shall with and out of the moneys to arise from such sale, calling in, and conversion, and with and out of the moneys of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts (other than the said sum of £2000 covenanted to be paid in and by the said marriage settlement of my said daughter H. S.), and shall stand possessed of the residue of the said moneys, IN TRUST for all my children as tenants in common, to be divided between them in such manner that the share of my said son G. B. shall be less in amount than the share of each of my other children by the sum of £800, and that the shares of my other children shall be equal: PROVIDED ALWAYS, and I declare (*b*), that the share of my said daughter H. S. shall be charged with the payment to the trustees of her marriage settlement of the said sum of £2000 thereby covenanted to be paid by my executors or administrators as aforesaid, and with the interest of the same, in exoneration of the residue of my estate and effects: PROVIDED ALWAYS, and I declare that if any child of mine living at my decease being a son shall die under the age of twenty-one years, and without leaving issue, or being a daughter shall die under that age and without having been married, as well the original share of every or any child so dying, as also any share or shares accruing to him or her under this provision, shall go to the others of my children in equal shares: PROVIDED ALSO, and I further declare that if any child of mine shall die in my lifetime, leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then and in every such case the last-mentioned child or children shall take (and if more than one, equally between them) the share (as well original as accruing) which his, her, or their parent would have taken under this my will if such parent had survived me and attained the age of twenty-one years: PROVIDED ALWAYS, and I declare that if any child or grandchild of mine entitled in expectancy to a share of the said residuary trust funds under this my will shall at my death be under the age of twenty-one years, my trustees shall invest the expectant share of each such minor with power to vary the

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(*b*) It is assumed that the settlement contains a provision for settling H. S.'s after-acquired property, so that the share she takes under the will will become subject to such settlement.

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

investments thereof from time to time, and the income thereof shall be applicable for his or her maintenance under the statutory provision in that behalf (*c*): And I also declare that (*Directions as to shares of infant married daughters, suprà, p.* 449): And I also declare that my trustees may at any time or times raise any part or parts not exceeding together one moiety of the expectant share of any minor under the trusts of this my will, and apply the same for his or her preferment, advancement, or benefit, in such manner as my trustees shall think fit (*Power to postpone sale and conversion, and to manage, suprà*, pp. 449, 450): Provided always, and I declare that if either of my sons having attained the age of twenty-one years shall within twelve calendar months after my death, by a notice in writing, to be given to my trustees or any one of them, offer to purchase the hereditaments hereby devised and bequeathed in trust for sale or any part thereof, then and in such case the same hereditaments shall be sold to the son making such offer at a price to be agreed on between my trustees and my said son, or if they are unable to agree, then at a price to be determined by the valuation of two indifferent persons, one to be chosen by each party or by an umpire to be chosen by the two valuers before they proceed to act in the valuation: And I further declare that if two or more of my said sons shall offer to purchase the same hereditaments under the option hereinbefore given to my said sons in that behalf the preference shall be given to the eldest of the sons making such offer: Provided always, that no purchaser of any hereditaments under the trust for sale hereinbefore declared, shall be bound or concerned to see or inquire whether any of my sons shall have made such offer to purchase as aforesaid, nor be affected by notice that such offer has been made (*Investment Clause, suprà*, p. 450).

Power of advancement.

Power to sons to purchase real estate at a valuation.

In witness, &c.

(*c*) See Conveyancing Act, 1881, s. 43.

No. IX.

WILL *of* REAL *and* PERSONAL ESTATE; *Income for* WIFE *for life, Remainder for* CHILDREN *equally; Shares of* DAUGHTERS *to be settled on themselves and their* ISSUE *with power to appoint a* LIFE INTEREST *to their respective* HUSBANDS; *Power to trustees on marriage of each* DAUGHTER *to revoke* TRUSTS *declared of her Share, and settle same on other trusts.*

OF REAL AND PERSONAL ESTATE—DAUGHTERS' SHARES TO BE SETTLED.

I, A. B., of, &c. (*Commencement of will, appointment of executors, trustees and guardians; devise and bequest of real and personal estate to trustees, upon trust for sale and conversion, and for the investment of the proceeds, with power to vary the investments from time to time, and for payment of income to wife for life, suprà*, pp. 448, 449): AND FROM AND AFTER the decease of my said wife, IN TRUST for my children who being sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or shall marry under that age, to be divided between them in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: PROVIDED ALWAYS, and I declare that my trustees shall retain the share of each of my daughters of and in the residuary trust funds upon the trusts following (that is to say), UPON TRUST to pay the income thereof to my same daughter during her life, and so that if and while she shall be under coverture the same shall be for her separate use, and she shall not have power to dispose of the same in the way of anticipation, but with power nevertheless for my same daughter to appoint, by deed or will, that after her decease the whole or any part of such income shall be paid to any husband of her who may survive her during his life or any less period: AND FROM AND AFTER the decease of such daughter, and subject to any appointment which may be made to her husband as aforesaid, IN TRUST for the children of my same daughter or any of them or any of their issue in such shares (if more than one) and in such manner as she shall, by any deed or deeds, or by her will, appoint, AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for the children of my same daughter, who being male shall attain the age of twenty-

Trusts for children equally.

Declaration that trustees shall hold share of each daughter in trust to pay income to her for life for separate use,

with power to appoint life interest to husband,

and subject thereto for issue of daughter as she shall appoint,

in default of appointment for children of daughter equally.

OF REAL AND PERSONAL ESTATE—DAUGHTERS' SHARES TO BE SETTLED.

one years, or being female shall attain that age or marry, in equal shares and if there be only one such child, the whole to be in trust for that one child, BUT SO NEVERTHELESS that no child who or any of whose issue shall take a share under any such appointment as aforesaid, shall take any part of the trust funds remaining unappointed without bringing the share appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly, unless my daughter making such appointment as aforesaid shall thereby direct the contrary: AND IN CASE there shall be no child of my same daughter who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, then UPON SUCH TRUSTS and in such manner as my same daughter shall by deed or will when not under coverture or by will while under coverture appoint, AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for my other children, who being sons attain the age of twenty-one years, or being daughters attain that age or marry, in equal shares, and so that the share or shares accruing to each or any daughter of mine under this trust shall be subject to the trusts hereby declared concerning the original share of the same daughter under this my will: PROVIDED ALWAYS, and I hereby declare that if any child of mine shall die in my lifetime leaving a child or children who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, then and in every such case the last mentioned child or children shall take (and if more than one, equally between them) the share to which his, her, or their parent would have been entitled of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years, including any share or shares which would have accrued to such parent under the trust and provision in that behalf hereinbefore contained: AND I DECLARE that (*a*) my trustees shall have power to raise any part or parts not exceeding together one moiety of the vested or expectant share of any son or grandchild of mine under the trusts of this my will and apply the same for his or her advancement, preferment, or benefit as my trustees shall think fit, but so that no such moneys shall be raised and applied as aforesaid during

Hotchpot clause.

If no issue of daughter then as daughter shall appoint,

in default of appointment, for testator's other children, daughter's accruing shares to be similarly settled.

Proviso that issue of children dying before testator shall take parent's share.

Advancement clause.

(*a*) The statutory provision for maintenance will apply to the daughters, although they only take life interests.—See Conveyancing Act, 1881, s. 43.

OF REAL AND PERSONAL ESTATE—DAUGHTERS' SHARES TO BE SETTLED.

the existence of any prior interest or interests therein under this my will, without the consent in writing of the person or persons having such prior interest or interests: AND I DECLARE that if any granddaughter of mine shall marry while an infant, the income of the share (if any) of the residuary trust funds to which she shall for the time being be entitled in possession under this my will, may be paid to her during her infancy, and her receipt shall be a sufficient discharge for the same: PROVIDED ALWAYS, and I hereby declare that it shall be lawful for my trustees, at any time or times in contemplation of the marriage of any daughter of mine, with the consent in writing of such daughter if she shall be of full age, but if not, then at the discretion of my trustees, by any deed or deeds to revoke the trusts, powers, and provisions hereinbefore declared and contained concerning the share (as well original as accruing) of such daughter of and in the residuary trust funds or any part thereof, and by the same or any other deed or deeds to resettle the same share, or the part thereof to which such revocation shall extend, upon such trusts, and with and subject to such powers and provisions for the benefit of such daughter and her husband and issue, or any one or more of them, as my trustees shall think fit, with liberty for them either to act themselves as the first trustees of such settlement, or to nominate any other persons or person to act either alone or in conjunction with them or any of them as such trustees, and so also that such settlement may contain such powers as to the investment of the trust funds, and the varying of such investments, and such other powers and provisions as may be deemed proper and convenient: PROVIDED ALSO that it shall be lawful for my trustees with the consent of my said wife if she shall be living, and if she shall be dead, at the discretion of my trustees, to raise out of the share the trusts whereof shall be so revoked as aforesaid, any sum of money not exceeding the sum of £——, and to pay the money to be so raised to the daughter so about to marry as aforesaid for her absolute use, or otherwise to apply the same for her benefit as my trustees shall think fit. (*Powers to postpone sale and conversion, and to manage unsold property; Clauses as to investments and appointment of new trustees; suprà*, pp. 450 *to* 452.)

Directions as to shares of infant married grandchildren.

Power to trustees on marriage of any daughter, with her consent to revoke trusts of her share, and re-settle same.

With power to pay a part to daughter absolutely.

IN WITNESS, &c.

No. X.

OF ANNUITY TO WIFE, LEGACIES TO YOUNGER CHILDREN, AND RESIDUE TO ELDEST SON.

WILL *of* REAL *and* PERSONAL *estate;* BEQUEST *of* ANNUITY *to* WIFE, *and* LEGACIES *to all the* CHILDREN *except the* ELDEST SON; RESIDUE *to the* ELDEST SON.

I, A. B., of, &c. (*Commencement, and appointment of executors, trustees, and guardians, suprà*, p. 448; *Bequest of furniture, &c., and a legacy to wife*): I GIVE to my said wife an annuity of £—— during her life, to be paid to her by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after my decease: I GIVE to each of my children (other than my eldest son ——) who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, the sum of £5000, free from legacy duty: AND IF any child (other than my eldest son) shall die in my lifetime leaving issue, then and in every such case I give the legacy of £5000, which each or any such child would have taken under this my will if he or she had survived me and attained the age of twenty-one years, to his or her children (if any) who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, and if there shall be only one such child, the whole to go to that one child: AND I DECLARE that if at my decease any child or grandchild of mine presumptively entitled to a legacy or a share of a legacy under the aforesaid bequests, shall be under the age of twenty-one years, and being a female shall be also unmarried, then and in every such case my trustees shall retain the presumptive legacy or share of such minor, and invest the same, with power from time to time to vary the investments thereof, to the intent that the income of the same legacy or share shall be applicable for or towards the maintenance and education (*a*) of such minor, under the statutory power in that behalf, and so also that my

Bequest of annuity to wife for life.

Bequest of a legacy to each younger son attaining twenty-one and to each daughter attaining that age, or marrying.

Legacies of children dying before testator to go to their issue (if any).

Legacies of infants to be retained and invested,

and income applied for maintenance.

(*a*) It was held that sect. 26 of 23 & 24 Vict. c. 145, did not apply to a contingent legacy where the infant on attaining twenty-one would not be entitled to the intermediate interest. (*In re* George, 5 Ch. D. 837.) The language of sec. 43 of the Conveyancing Act, 1881, is different in this respect from that of the former Act, but it is desirable to prevent any question by an express direction in the will.

Whether statutory maintenance clause applies to contingent legacy.

trustees may, if they think fit, raise any part not exceeding a moiety of the same presumptive legacy or share, and apply the same for the preferment, advancement, or benefit of such minor, at their discretion: AND I DECLARE that if any of the legacies hereinbefore bequeathed shall fail to become absolutely vested in any person or persons under this my will, every such legacy and the accumulations thereof, and the investments representing the same, or such part thereof as shall not have been applied for the advancement of any minor presumptively entitled thereto as aforesaid, shall fall into and form part of my residuary estate. (*Devise and bequest of residuary real and personal estate to trustees in trust to sell and convert, suprà*, p. 448): AND SHALL with and out of the moneys produced by such sale and conversion as aforesaid, and with and out of the moneys of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts, and the legacies hereby bequeathed, and the legacy duty thereon, AND SHALL also appropriate and invest in the £3 per Cent. Annuities such a sum of money as will, when invested, be sufficient with the income thereof to pay and satisfy the said annuity of £—— hereinbefore given to my said wife, and shall retain the same as a fund to answer the said annuity, and shall stand possessed of the residue of the said moneys, and also of the fund set apart to answer the said annuity subject to the same annuity (hereinafter called the said residuary moneys), IN TRUST for my eldest son G. B.: PROVIDED ALWAYS, that if the said G. B. shall die in my lifetime, or shall survive me and die under the age of twenty-one years, then and in such case my trustees shall stand possessed of the said residuary moneys IN TRUST for the child or children (if any) of my said son G. B., who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, and if there shall be no such child as last aforesaid, then IN TRUST for such son of mine (other than the said G. B.) as shall first attain the age of twenty-one years: AND I DECLARE that if the said G. B., or other the person entitled in expectancy to the said residuary moneys or any part thereof under this my will, shall be under the age of twenty-one years at my decease, my trustees shall invest the same, with liberty from time to time to vary the investments thereof: AND my trustees may at any time or times during the minority of the said G. B., or any other person for the time being entitled in expectancy to

OF ANNUITY TO WIFE, LEGACIES TO YOUNGER CHILDREN, AND ELDEST SON.

Advancement clause.

Legacies which fail to vest to sink into residue.

Devise and bequest of residue.

Trusts of proceeds, to appropriate in £3 per Cents. a fund to answer annuity.

Residue to eldest son.

But if he dies under age, then for his children attaining twenty-one, &c., and if no child, then for such son of testator as shall first attain twenty-one.

Direction to invest residue during infancy.

Advancement clause.

OF ANNUITY TO WIFE, LEGACIES TO YOUNGER CHILDREN, AND RESIDUE TO ELDEST SON.

the said residuary moneys or any part thereof under this my will, raise out of the same moneys any sum or sums not exceeding together the sum of £——, and may apply the same for the advancement, preferment, or benefit of such minor as my trustees shall think fit. (*Power to postpone sale and conversion, and to manage; Investment clause; suprà*, pp. 449, 450.)

IN WITNESS, &c.

No. XI.

DEVISE OF HOUSE AND LAND TO INFANT SON, AND DEVISE AND BEQUEST OF RESIDUE IN TRUST FOR WIFE AND CHILDREN.

WILL *of* REAL *and* PERSONAL ESTATE; DEVISE *of House and Lands to* TRUSTEES *in Trust to* MANAGE *and* APPLY RENTS *and* PROFITS *for Benefit of* SON *During his* MINORITY, *and to* CONVEY *same to him on his attaining Twenty-one; In case of decease of* SON *during Minority, the Property to fall into Residue;* DEVISE *and* BEQUEST *of* RESIDUE *of Real and Personal Estate upon Trust for* SALE *and* CONVERSION, *and to pay income to* WIFE *for life; and after death of Wife for* CHILDREN; *Usual powers and provisions.*

Devise of lands to son, on his attaining twenty-one.

I, A. B., of, &c. (*commencement of will and appointment of executors, trustees, and guardians, suprà*, p. 448): I GIVE AND DEVISE my messuage or dwelling-house in which I am now residing, called ——, together with the pleasure grounds, lands, gardens, outbuildings, and appurtenances thereunto belonging, or therewith usually held or enjoyed, and also all that piece and parcel of land, situate and being ——, which I lately purchased of ——, and which is now in the tenure or occupation of ——, his under-tenants or assigns, unto my trustees, IN TRUST that if my son F. B. shall be under the age of twenty-one years at my decease, my trustees shall enter into, and during the minority of the said F. B. remain in the possession or receipt of the rents and profits of the said messuage and premises, and manage the same with power to let the same for any term of years not exceeding seven years in possession, and shall apply the whole or such part as they shall think fit of the said rents and profits, for

Power to trustees to apply rents and profits of estate during minority of son for his benefit.

or towards the maintenance and education of the said F. B., and shall invest the surplus (if any) of the said rents and profits, and all the resulting income thereof, so as to accumulate at compound interest, with power to resort to the accumulations of any preceding year or years, and to apply the same for the maintenance and education of my said son: AND upon further trust that if and when the said F. B. shall attain the age of twenty-one years my trustees shall convey the said messuage and premises to him in fee simple, and shall transfer to him the said accumulations, or so much thereof as shall not have been applied as aforesaid. But if the said F. B. shall die under the age of twenty-one years, then my trustees shall stand seised and possessed of the said messuage and premises and accumulations upon the trusts hereinafter declared concerning my residuary real and personal estate. I GIVE, DEVISE, AND BEQUEATH all my real and personal estate not hereby otherwise disposed of, unto my trustees, &c. (*Devise and bequest of real and personal estate, upon trust for sale and conversion into money, and for investment and varying securities, and to pay income to wife for life, and after her decease for testator's children; With usual clauses, suprà,* pp. 448 *to* 452.)

DEVISE OF HOUSE AND LAND TO INFANT SON AND DEVISE AND BEQUEST OF RESIDUE IN TRUST FOR WIFE AND CHILDREN.

Devise and bequest of residue of real and personal estate.

IN WITNESS, &c.

No. XII.

WILL *giving* REAL ESTATE *to* ELDEST SON *charged with* ANNUITY *to* WIFE *and* LEGACIES *to* YOUNGER CHILDREN *secured by a* TERM *vested in* TRUSTEES.

OF REAL ESTATE TO ELDEST SON SUBJECT TO CHARGES.

I, A. B., of, &c. (*Commencement of will and appointment of executors, trustees, and guardians, suprà,* p. 448): I GIVE all my messuages, lands and hereditaments being of freehold tenure to the use of my trustees for the term of one thousand years, And from and after the determination of the said term, and in the meantime subject thereto, and to the trusts thereof, To the use of my eldest son C. B., in fee simple (*a*): AND I declare that the said premises are hereinbefore devised to the use of my

Devise of freehold and copyhold property to trustees for term and subject thereto to eldest son in fee.

Trusts of term,

(*a*) It is assumed that C. B. is of age.

OF REAL ESTATE TO ELDEST SON SUBJECT TO CHARGES.

trustees during the said term of one thousand years, Upon the trusts following (that is to say) UPON TRUST that if my personal estate hereinafter bequeathed shall be insufficient for the payment of my funeral and testamentary expenses and debts, and the legacies given by this my will, or any codicil hereto, and payable out of my personal estate, then and in such case my trustees shall by mortgage or sale of the said premises for all or any part of the said term or by or out of the rents and profits thereof or by any other reasonable ways or means raise the money required to make up the deficiency, and apply the money to be so raised accordingly: AND UPON FURTHER TRUST that my trustees shall by some or one of the ways or means aforesaid raise and pay to my said wife during her life an annuity of £—— during her life by equal half-yearly payments, the first payment to be made at the end of six calendar months after my death: AND UPON FURTHER TRUST that my trustees shall by some or one of the ways or means aforesaid raise the sum of £—— for each child of mine (other than the said C. B.) who being a son attains the age of twenty-one years or being a daughter attains that age or marries under that age, and shall also raise and pay to each child who has attained a vested interest in the sum of £—— hereinbefore provided for him or her interest thereon after the rate of £4 per cent. per annum so long as the principal sum shall remain unpaid, and so that the receipt of any daughter who shall marry while an infant shall be a sufficient discharge for such interest notwithstanding her infancy: AND UPON FURTHER TRUST that if at my decease any son of mine other than the said C. B. shall be under the age of twenty-one years or any daughter of mine shall be under that age and unmarried my trustees shall by some one of the ways or means aforesaid raise such annual sum as my trustees shall think fit, not exceeding in any year for any one such minor the sum of £——, and apply the same for his or her maintenance or education in such manner as they my trustees shall think fit, with liberty for them to pay the same to the guardian or guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: And I declare that subject to the foregoing trusts my trustees shall permit the rents and profits of the said premises comprised in the said term to be received by the said C. B., his heirs and assigns. I GIVE all my copyhold and leasehold lands, tenements

to raise money to pay debts and legacies in and of personal estate,

to pay annuity to wife for life,

to raise portions for younger children,

to raise annual sums for maintenance of younger children during minority.

Devise of copyholds

and hereditaments unto my trustees, UPON the same trusts as are hereinbefore declared concerning the said term of one thousand years limited in the said freehold hereditaments, but so as not to increase or multiply charges: AND subject thereto, IN TRUST for the said C. B., absolutely: PROVIDED ALWAYS and I declare that it shall be lawful for my trustees at all times during the continuance of the trusts of the said term of one thousand years to concur with the said C. B., his heirs or assigns, in the sale in any manner my trustees shall think fit, of the freehold, leasehold, and copyhold premises hereinbefore devised and bequeathed, or any part thereof, and in assuring the same to the purchaser or purchasers freed and discharged from the trusts of the said term: BUT in case of any such sale the proceeds shall be either applied in the payment of incumbrances affecting the said premises, or some part thereof, or the same shall be received by my trustees, and at the option of the said C. B. his heirs or assigns and at his or their request in writing, be either laid out in the purchase of other hereditaments to be settled to the like uses as are hereinbefore declared concerning the said premises hereinbefore devised and bequeathed or invested in the names of my trustees in or upon any stocks, funds, shares or securities which my trustees shall approve to be held by them upon such trusts as shall correspond as nearly as may be with the uses and trusts hereinbefore declared concerning the said premises, but with power at the like request in writing to vary the said investments or to convert the same into money and lay out the produce in the purchase of other hereditaments to be settled as aforesaid: (*Bequest of legacies*) AND I give all the residue of my personal estate to my said wife absolutely.

OF REAL ESTATE TO ELDEST SON SUBJECT TO CHARGES.

and leaseholds to trustees upon corresponding trusts.

Power to trustees to concur with ultimate devisee in sales.

Application of sale money.

IN WITNESS, &c.

No. XIII.

OF SETTLED FUNDS AND OTHER PROPERTY AMONG CHILDREN BY TWO MARRIAGES.

WILL *of a* MARRIED MAN *who has married twice.* APPOINTMENT *of the* FUNDS *settled on his* FIRST MARRIAGE *among his* CHILDREN *by* THAT MARRIAGE *and gift of all the* RESIDUE *of his* OWN PROPERTY *among his* CHILDREN *by* BOTH MARRIAGES, CHILDREN *of* SECOND MARRIAGE *to take an* ADDITIONAL SHARE *so as to place them on an* EQUALITY *with the children of the First Marriage.*

Recital that testator has children by two marriages.

Settlement on first marriage, giving him power of appointment.

Appointment of settled funds to children of first marriage equally.

I, A. B., of, &c. (*Commencement of will—Appointment of executors and trustees—Bequests of legacies*): AND WHEREAS I have issue several children by my first wife ——, deceased, and also several children by my present wife ——: AND WHEREAS by an indenture of settlement made on my marriage with my first wife, dated —— day of ——, 18—, I have power to appoint by will the trust funds settled by the said indenture among my children by my said first wife: Now in exercise of the said power I hereby appoint all the moneys, stocks, funds and securities which at my decease shall be held upon or subject to the trusts of the said indenture (which moneys, stocks, funds and securities are hereinafter referred to as "the trust funds settled on my first marriage"), unto and among all my children by my said first wife who being sons attain the age of twenty-one years, or being daughters attain that age or marry, in equal shares: AND I give, devise and bequeath all my real and personl estate,

Devise and bequest of testator's own property upon trust for sale and conversion, and for wife during widowhood, and then to raise for each child of second marriage a sum equal to share of each child of first marriage in settled fund, and to divide residue among

&c. (*Devise of real and personal estate to trustees In trust to sell and convert and invest proceeds and pay income to wife for her life or widowhood*): And after the decease or second marriage of my said wife (which shall first happen) In trust that my trustees shall out of the residuary trust funds raise and pay to each and every child of mine by my present wife who being a son [has attained or] shall attain the age of twenty-one years or being a daughter [has attained or] shall attain that age or shall marry under that age, a sum of money equal in amount or value to the part or share of the trust funds settled on my first marriage, to which each child of mine by my first marriage shall become entitled under the appointment hereinbefore contained, and shall divide the surplus of the residuary trust funds among all my children as well by my first wife as by my present wife who being sons have attained or shall attain the age of twenty-one years, or being daughters have attained or shall attain that age or shall marry, in equal shares (*Advancement and other clauses, suprà*, pp. 449 *to* 452).

OF SETTLED FUNDS AND OTHER PROPERTY AMONG CHILDREN BY TWO MARRIAGES.

children of both marriages.

IN WITNESS, &c.

No. XIV.

WILL *of* REAL *and* PERSONAL *estate;* BEQUEST *of* PLATE, FURNITURE, *&c., to Testator's* TWO MARRIED DAUGHTERS *equally, for their* SEPARATE USE; DEVISE *and* BEQUEST *of* RESIDUARY REAL *and* PERSONAL *estate to Trustees upon usual trust for* SALE *and* CONVERSION, *and* INVESTMENT; *Trusts of* PROCEEDS *as to* ONE MOIETY *for one* DAUGHTER *and her* HUSBAND *and* ISSUE,—*as to* OTHER MOIETY *for other* DAUGHTER *and her* HUSBAND *and* ISSUE,—*with* CROSS *executory trusts; Usual powers and provisions.*

OF REAL AND PERSONAL ESTATE FOR TWO MARRIED DAUGHTERS AND THEIR RESPECTIVE HUSBANDS AND ISSUE.

I, A. B., of, &c. (*Commencement, and appointment of executors and trustees, suprà*, p. 448): I GIVE all my jewels, trinkets, plate, linen, china, glass, books, pictures, prints, furniture, and household effects to my two daughters, G. H., the wife of I. H., of, &c., and K. M., the wife of L. M., of, &c. (*a*), to be distributed between them by my trustees in such manner as shall be agreed on between my said two daughters, or in case of any difference, as shall be settled by my trustees, whose decision shall be final: AND IF either of my said daughters shall die in my lifetime, then I bequeath the said jewels and other articles to the other of my said daughters, AND IF both of my said daughters shall die in my lifetime, then the same shall fall into and form part of my residuary estate (*Devise and bequest of residuary real and personal estate to trustees upon trust to sell and convert, and out of proceeds to pay funeral and testamentary expenses, and debts and legacies, and invest residue, suprà*, p. 448): AND SHALL stand possessed of the said residuary

Bequest of jewels, &c., to two daughters equally.

If one daughter dies before testator, the whole to the other of them.

If both die, to fall into residue.

Devise and bequest of residue on usual trusts for sale and conversion and investment of proceeds.

(*a*) They will take for their separate use under the Married Women's Property Act, 1882.

Trusts of proceeds, as to one moiety,

to pay income to one daughter for life.

With power to appoint a life interest to her husband.

Afterwards for issue as same shall appoint.

In default of appointment, for children equally.

Hotchpot clause.

In default of issue, for appointees of same daughter.

moneys, and the investments for the time being representing the same (hereinafter called the residuary trust funds), Upon the trusts following (that is to say), As to one moiety thereof, In trust to pay the income of such moiety to my said daughter, G. H., during her life, and so that during the lifetime of her present or any future husband, the same shall be for her sole and separate use, and so that she shall not have power to dispose thereof in the way of anticipation, but with power for the said G. H., by any deed or deeds, or by her will to appoint that after her decease the whole or any part of the said income shall be paid to the said I. H., or to any future husband of her who may survive her, during his life, or for any less period: And after the decease of the said G. H., and subject to any such appointment in favour of her husband as aforesaid, In trust for such child, children, or remoter issue of the said G. H., whether by the said I. H., or by any future husband, in such shares (if more than one) and in such manner as the said G. H. shall by any deed or deeds, or by her will, whether under coverture or not, appoint; And in default of such appointment, and so far as any such appointment shall not extend, In trust for all the children of the said G. H., who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child, But so that no child who or any of whose issue shall take any share under any such appointment as aforesaid shall participate in the unappointed part of the said moiety, without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the said G. H. shall by such appointment direct the contrary: And if there shall be no child of the said G. H., who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then In trust for such person or persons, and in such manner as the said G. H. shall by any deed or deeds, or by her will, whether under coverture or not, appoint: And in default of such appointment, and so far as any such appointment shall not extend, Upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the other moiety of the residuary trust funds, or such of them as shall be then

OF REAL AND PERSONAL ESTATE FOR TWO DAUGHTERS AND THEIR RESPECTIVE HUSBANDS AND ISSUE.

In default of appointment, upon same trusts as other moiety.

As to other moiety, upon similar trusts for other daughter and her issue.

Advancement clause.

subsisting and capable of taking effect: And as to the other moiety of the residuary trust funds, in trust to pay the income thereof to my said daughter, K. M., &c. (*Trusts in favour of K. M., her husband and issue and her appointees, similar to those declared of the first moiety, mutatis mutandis*): And in default of such appointment, and so far as any such appointment shall not extend, Upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the first-mentioned moiety of the said residuary trust funds, or such of them as shall be then subsisting, and capable of taking effect: And I declare (*Direction as to shares of unmarried granddaughters, suprà*, p. 469). And I declare that my trustees may at any time or times raise any part or parts not exceeding together one moiety of the vested or presumptive share of any grandchild of mine under the trusts of this my will, and apply the same for his or her preferment, advancement, or benefit, as my trustees shall think fit, but so that no moneys shall be raised under this power during the continuance of any prior interest or interests in the same moneys under this my will, without the consent in writing of the person or persons having such prior interest or interests. (*Power to postpone sale and conversion, and to manage unsold property: Investment clause; suprà*, pp. 449, 450.)

In witness, &c.

No. XV.

WILL *of a* Bachelor; Direction *to* appropriate *a* Legacy *for* each *of his* Sisters *to be* settled *upon her and her* Issue, *with* power *to* appoint *a* Life Interest *to a* Husband; Residue *to Testator's* Brother *absolutely.*

BEQUEST OF LEGACIES TO SISTERS TO BE SETTLED; RESIDUE TO BROTHER.

Devise and bequest of residue.

Trust to appropriate

I, A. B., of, &c. (*Commencement, and appointment of executors and trustees, suprà*, p. 448): I give, &c. (*Bequest of legacies*): I give, &c. (*Devise and bequest of residue of real and personal estate to trustees, in trust to sell and convert, and out of proceeds to pay funeral and testamentary expenses, debts and legacies, suprà*, p. 448): And shall, with and out of the residue of

BEQUEST OF LEGACIES TO SISTERS TO BE SETTLED; RESIDUE TO BROTHER.

Legacy for each of testator's sisters.

Surplus to be in trust for brother.

Trustees to hold each appropriated legacy, in trust to invest same and pay income to sister for separate use with power to appoint life interest to husband,

and subject thereto in trust for her issue as she shall appoint.

In default of appointment, for her children equally.

Hotchpot clause.

In default of issue, to fall into residue.

the said moneys, appropriate and set apart a sum of £5000 for each of my five sisters (*naming them*), to be held upon the trusts hereinafter declared concerning the same, and shall stand possessed of the surplus of the said residuary moneys, In trust for my brother (*naming him*), absolutely: And I declare that my trustees shall stand possessed of each of the said several sums of £5000 hereinbefore directed to be appropriated for my said five sisters respectively, Upon trust that my trustees shall invest the same sum of £5000 with liberty to vary the investments thereof from time to time, and shall stand possessed of the same sum of £5000 and the investments thereof, Upon the trusts following (that is to say), In trust to pay the income thereof to the sister for whom the same shall have been appropriated as aforesaid during her life, and so that if and while she shall be under coverture, the same shall be for her sole and separate use, without any power for her to dispose thereof in the way of anticipation, but with power for her to appoint by deed or will that the whole or any part of the said income shall be paid to any husband of her who may survive her during his life, or for any less period: And from and after her decease, and subject to any appointment which may be made to any husband of her as aforesaid, In trust for such child, children, or remoter issue of my same sister in such shares (if more than one) and in such manner as my same sister shall by deed or will appoint: And in default of such appointment, and so far as any such appointment shall not extend, In trust for all the children of my same sister, who being sons attain the age of twenty-one years, or being daughters attain that age or marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child, But so that no child who or any of whose issue shall take any share under such appointment shall take any share of the unappointed part of the said legacy without bringing the share or shares appointed to him or her, or to his or her issue, into hotchpot, and accounting for the same accordingly, unless the sister making such appointment shall thereby direct the contrary: And in case there shall be no issue of my same sister in whom the same sum of £5000, or the investments representing the same shall become absolutely vested under the trusts aforesaid, then and in such case, and subject to the said

BEQUEST OF LEGACIES TO SISTERS TO BE SETTLED; RESIDUE TO BROTHER.

Direction as to shares of infant married women.

trusts, the same sum of £5000, or the investments representing the same shall sink into and form part of the surplus of my residuary estate, for the benefit of my said brother (*name*), absolutely. (*Advancement clause, as in last Precedent*, p. 479, *substituting* "*nephew or niece*," *for* "*grandchild*.") And I also declare that if any niece of mine shall marry while an infant my trustees may, during her infancy, retain the share (if any) to which she shall be entitled in possession under this my will of any such legacy as aforesaid, and pay to her the income thereof, for which income her receipt shall be a sufficient discharge. (*Power to postpone sale and conversion; Investment clause, suprà*, pp. 449, 450.)

In witness, &c.

No. XVI.

OF LEGACIES AND ANNUITIES TO CHARITIES AND OTHER OBJECTS, RESIDUE TO BROTHER.

WILL *of a* Spinster; Bequest *of* Legacies *to* Charities; Bequest *of* Legacies *to* Brothers; *also a* Legacy *upon trust for Testatrix's* Sister *and her* Issue; Legacies *to* Nephews *and* Nieces *of Testatrix, being some of the children of a deceased sister;* Bequest *of another* Legacy *upon trusts for a* Married Niece *and her* Husband *and* Issue; Bequest *of another* Legacy *upon trust for a* Nephew (*being an improvident person*) *and his* Wife *and* Children; Legacy *to Trustees for the benefit of a Lunatic* Brother *during his life and then to fall into residue;* Authority *to Trustees to make an allowance to an Improvident* Brother; *Other* Legacies *and* Annuities; Residue *to* Brother *of Testatrix.*

I, A. B., of, &c., hereby revoke all former wills and testamentary dispositions, and declare this to be my last will.

Appointment of executors and trustees.

1. I appoint C. D., of, &c., and E. F., of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will.

Charitable legacies.

2. I give the following charitable legacies, free from legacy

OF LEGACIES AND ANNUITIES TO CHARITIES AND OTHER OBJECTS, RESIDUE TO BROTHER.

duty, namely:—To the —— Infirmary the sum of £——, to the —— Hospital the sum of £——, to the —— Society the sum of £—— (*state other charitable legacies*), AND I DECLARE that the receipt of the respective treasurers of the aforesaid institutions shall be a sufficient discharge for the said legacies respectively; AND I DECLARE that the said charitable legacies shall be paid free from legacy duty, and that the same and the legacy duty thereon respectively, shall be paid exclusively out of such part of my personal estate as may be legally bequeathed for charitable purposes, and in priority to all other payments thereout.

3. I GIVE to my brothers (*naming them*) the sum of £5000 each free from legacy duty.

Legacy to trustees upon trust to invest

4. I GIVE the sum of £5000 unto my trustees UPON TRUST that they shall invest the same with liberty from time to time to vary the investments thereof, and shall stand possessed of the said legacy of £5000, and the investments thereof, UPON the trusts following (that is to say), IN TRUST to pay the income thereof to my sister, G. H., of, &c. (the widow of, &c.), during her life: AND AFTER her decease IN TRUST for —— (*names*), the five children of the said G. H. or such of them as shall survive me (*a*), and such child or children (if any) of any one or more of them the said (*five children*) who may die in my lifetime, as being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the objects of this trust to take in equal shares, except that the children of any deceased child of the said G. H. shall take between them the share only which their parent would have taken if he or she had survived me.

and pay income to sister for life, and after her death for her children and issue *per stirpes*.

Legacy to each of nephews and nieces, children of a deceased sister.

5. I GIVE to each of my nephews and nieces (*names*) (being four of the six children of my deceased sister, I. K.) the sum of £1000; PROVIDED ALWAYS, that if any of them my last-named nephews and nieces shall die in my lifetime leaving issue, the child or children of every or any nephew or niece so dying as aforesaid, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall take, and if more than one equally between them, the legacy, which his, her, or their parent would have taken if such parent had survived me, and if any child

Proviso that the children of any nephew or niece dying before testator, shall take parent's share,

and shall be entitled to interest for maintenance during infancy.

(*a*) It is assumed that all the children of G. H. have attained twenty-one.

OF LEGACIES AND ANNUITIES TO CHARITIES AND OTHER OBJECTS, RESIDUE TO BROTHER.

entitled in expectancy to a legacy or a share of a legacy under this clause shall be an infant at my decease, the said legacy or share shall bear interest after the rate of £4 per cent. per annum computed from my decease, which interest shall be applicable for the maintenance and education of such infant under the statutory provision in that behalf unless such infant shall be a married woman, in which case the interest shall be paid to her and her receipt shall be a sufficient discharge for the same.

Bequest of a legacy to trustees, upon trust to invest

6. I GIVE the sum of £1000 unto my trustees, UPON TRUST that they shall with the consent in writing of my niece L. M., the wife of A. M., of, &c. (another daughter of the said I. K.), and of the said A. M., during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of my trustees, invest the said sum of £1000, with liberty for my trustees, with such consent or at such discretion as aforesaid, to vary the investments thereof from time to time, and shall stand possessed of the said sum of £1000, and the investments for the time being representing the same, UPON the trusts following (that is to say), IN TRUST to pay the income thereof to the said L. M. during her life for her sole and separate use, and so that she shall not have power during coverture to dispose thereof in the way of anticipation, AND FROM AND AFTER her decease, IN TRUST to pay the said income to the said A. M. if he shall survive her during his life, AND AFTER the decease of the survivor of the said L. M. and A. M., then IN TRUST for such child, children or remoter issue of the said L. M. by the said A. M. in such shares (if more than one) and in such manner as the said L. M. and A. M. by any deed or deeds shall appoint, and in default of such appointment and so far as any such appointment shall not extend, then as the survivor of them by any deed or deeds or by his or her will shall appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said L. M. by the said A. M. who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be but one such child, the whole to be in trust for that one child, BUT so that no child who or any of whose issue shall take any share under any such appointment as aforesaid shall take any share of the unappointed

and pay income to married niece for life, and

then to her husband for life,

and after decease of survivor, in trust for her issue as she shall appoint;

and in default of appointment, for children equally.

Hotchpot clause.

part of the said trust legacy without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the persons or person making such appointment shall thereby direct the contrary.

Another legacy to trustees upon trust to invest,

7. I GIVE the sum of £1000 unto my trustees, UPON TRUST that they shall invest the same, with liberty to vary the investments thereof from time to time; And shall stand possessed of the last mentioned sum of £1000, and the investments for the time being representing the same (hereinafter in this article called "the said trust legacy"), UPON the trusts following (that is to say), IN TRUST during the life of my nephew N. K. (another son of the said I. K.), to pay and apply the income thereof for the maintenance and support or otherwise for the benefit of all or such one or more of the said N. K. and his wife and issue for the time being (if any), or if he shall for the time being have no wife or issue living, then for the benefit of all or such one or more of the said N. K. and his brothers, sisters, nephews, and nieces for the time being, in such manner in all respects as my trustees shall in their uncontrolled discretion think fit, AND FROM AND AFTER the decease of the said N. K., then IN TRUST for all his children, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be but one such child the whole to be in trust for that one child; AND IF there shall be no child of the said N. K. who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then subject to the foregoing trusts and powers the said trust legacy shall fall into and form part of my residuary estate: PROVIDED ALWAYS, that the said N. K. may by deed or will appoint that the whole or any part of the income of the said trust legacy shall, after his death, be paid to his widow (if any) during her life, or for any less period: PROVIDED ALSO, that notwithstanding the foregoing trusts, my trustees may at any time or times, if they shall in their uncontrolled discretion think fit so to do, raise the whole or any part of the said trust legacy, and pay or transfer the same to the said N. K. for his absolute use, or they may, with the consent of the said N. K., revoke by deed all or any of the trusts hereinbefore declared, and declare any new or other

and during life of nephew, to apply income for the maintenance of him and his wife and children, or some of them, at discretion of trustees,

afterwards for children.

Power to assign life interest to widow.

Power to trustees to raise the whole or any part of legacy and pay it to nephew absolutely, or (with his consent) to alter trusts.

trusts of or concerning the said trust legacy, or any part thereof.

OF LEGACIES AND ANNUITIES TO CHARITIES AND OTHER OBJECTS, RESIDUE TO BROTHER.

Direction as to shares of infant married women.

8. Whenever under the foregoing bequests any married woman who is an infant shall be entitled in possession to any legacy, or share of a legacy, my trustees may during the infancy of such woman retain such legacy or share, and pay to her the income arising from the investment thereof, for which income her receipt shall be a sufficient discharge.

Legacy to trustees for the income to be applied for the benefit of a lunatic brother, and subject thereto to fall into residue.

9. I GIVE the sum of £—— to my trustees, IN TRUST that my trustees shall invest the same, with power from time to time to vary the investments thereof, AND shall, during the life of my brother O. P., now residing at —— House under the care of Dr. ——, apply the income of the said trust fund, or a competent part thereof, in or for the maintenance, support, and benefit of the said O. P., with liberty to continue him in the institution where he now resides, or to remove him from thence and place him under the care of some other person or persons and generally to arrange and provide for the comfort of the said O. P. in such manner as they shall in their uncontrolled discretion think fit, And subject to the foregoing trust the said sum of £——, and the trust fund representing the same, and the income thereof not required for the purpose aforesaid, shall sink into and form part of my residuary estate.

Authority to trustees to make an allowance not exceeding a certain annual amount to an improvident brother,

with discretionary powers to discontinue or suspend same.

10. I EMPOWER my trustees during the life of my brother R. S., if they shall in their discretion think proper, but not otherwise, to make an allowance to the said R. S., or to his wife (if any), of such an amount, and either by quarterly, monthly, or other payments, and generally in such manner as my trustees shall think fit, provided that the amount of such allowance in any one year shall not exceed £——, and my trustees may either pay the said allowance into the hands of the said R. S., or into the hands of his wife, for her sole and separate use, or may apply the same for his or her benefit in such manner as they shall think fit, And I expressly declare that it shall be in the absolute discretion of my trustees whether they will make any such allowance or not, and they may at any time discontinue or suspend the same, either wholly or partially, without assigning any reason for so doing, And I also empower my trustees to set apart, and appropriate and invest in their names a sufficient part of my estate to provide such allowance as aforesaid, AND I declare that subject to

the said allowance, the fund so set apart, and the income thereof not required for the purpose aforesaid, shall sink into and form part of my residuary estate.

Legacies to servants.

11. I GIVE the following legacies free from legacy duty, namely, to, &c. (*state particulars of legacies to various friends*) (*a*): AND TO EACH of my servants who shall be living with me at my decease a sum equal to one year's wages in addition to the wages then due to him or her.

Gift of annuities.

12. I GIVE the following annuities (free from legacy duty), namely, an annuity of £—— to —— during her life: AND an annuity of £—— to —— and —— his wife and the survivor of them for their lives and the life of the survivor of them; AND I DIRECT that the said several annuities shall be paid quarterly, the first quarterly payment to be made at the expiration of three calendar months after my decease: AND I DIRECT my trustees to appropriate and set apart and invest such a sum of money as will when invested produce by the income thereof an annual sum equal to the amount of the annuities or annuity for the time being payable under this my will, and to apply the income or (if necessary) the corpus of the fund so appropriated in payment of the said annuities or annuity, which fund shall on the dropping of the respective annuities fall into and form part of my residuary estate; and as each annuity ceases, I authorise my trustees to transfer to the residuary legatee a corresponding part of the said appropriated fund, retaining only such part thereof as at the time of such transfer will be sufficient to produce by the income thereof an annual sum equal to the then subsisting annuity or annuities.

Devise and bequest of residue to brother.

13. I GIVE all my real and personal estate, not hereby otherwise disposed of subject to the payment of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed by this my will or any codicil hereto, unto my brother P. B. absolutely.

14. (*Investment clause; suprà*, p. 450.)

IN WITNESS, &c.

(*a*) It will be borne in mind that the exemption from legacy duty of legacies under £20, is now repealed. See 44 Vict. c. 12, s. 42.

No. XVII.

WILL *of a person carrying on a* TRADE *in* PARTNERSHIP *with other persons, containing* DIRECTIONS *as to* WINDING UP *the* BUSINESS.

OF A PARTNER, WITH DIRECTIONS AS TO WINDING UP BUSINESS.

Devise and bequest of residue of real and personal estate to trustees for sale and conversion.

Power to trustees to wind up share of testator in partnership business.

Power to trustees to permit testator's share of capital to remain in business for seven years.

I, A. B., of, &c. (*commencement of will and appointment of executors and trustees, and guardians, suprà*, pp. 447, 448 : (*Bequest of legacies*): I GIVE, DEVISE, AND BEQUEATH all my real and personal estate not hereby otherwise disposed of unto my trustees, UPON TRUST that my trustees shall (subject to the directions hereinafter contained with respect to my partnership business) sell, &c. (*Trusts for sale and conversion: Trusts of proceeds as in Precedent No. II., suprà*, pp. 448, 449) ; AND with respect to my share and interest in the business of ——, now carried on by me at —— in partnership with —— (*names*), under the firm of —— and Co., I empower my trustees to adjust and settle all accounts and transactions relating to the said partnership business, and to wind up the affairs and concerns thereof, and ascertain the amount of my share and interest therein, either according to the provisions of the articles of partnership under which the said business shall be carried on at my decease, or upon such other terms and in such other manner as may be agreed on between them and my surviving partners or partner, with power for my trustees to refer to arbitration, or otherwise to compromise or settle any question that may arise in or about the winding up of the said concern, in such manner as they may think fit, and generally to do and execute all such acts and things in relation to the premises as may appear to them necessary or expedient, without being answerable for any loss which may arise thereby: AND I AUTHORISE my trustees, if they shall in their discretion think fit, to permit the whole or any part of the amount which on taking the accounts of the said partnership shall appear to be due to my estate, as and for my share and interest in the said business, to remain in the said business as a loan for any period not exceeding seven years from my decease, but so that the repayment thereof, with interest after the rate of £5 per cent. per annum, shall be secured by the joint and several bond of the

OF A PARTNER, WITH DIRECTIONS AS TO WINDING UP BUSINESS.

Power to trustees to postpone sale and conversion.

persons or person for the time being continuing to carry on the said business either with or without any other security for the same, as my trustees shall think fit: And (subject to the provisions hereinbefore contained as to the said business) I empower my trustees to postpone the sale and conversion of my real and personal estate for so long as they shall think fit: And I direct that the net rents and income of my real and personal estate, which shall for the time being remain unsold and unconverted (including the interest of any capital left in the said business as aforesaid), shall be paid, &c. (*Direction as to income of unconverted property; Clauses as to investments and appointment of new trustees, suprà*, pp. 450 *to* 452.)

In witness, &c.

No. XVIII.

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

WILL *of a* Trader; Bequest *to* Wife *of use of* Furniture, *&c., during* Widowhood; Devise *and* Bequest *of* Real *and* Personal *estate to trustees;* Direction *to carry on* Business *until* Youngest Son *of Testator attains* Twenty-one, *and during the same period to pay* Annual Sum *to Testator's* Wife, *determinable on her* Second Marriage; *When youngest Son attains twenty-one,* Business *to be offered for* Sale *to* Sons *in* Succession, *and* Lease *of* Business Premises *to be made to purchaser;* Annual Sum *to be paid to* Wife, *and subject thereto,* Surplus *to go to all the* Children *equally; Usual provisions.*

Bequest to wife of use of books, &c., during widowhood.

I, A. B., of, &c. (*commencement and appointment of executors and trustees and guardians, suprà*, p. 448): I give to my wife —— (*name*) during her life, if she shall so long remain my widow, the use and enjoyment of all my books, pictures, prints, plate, linen, china, household furniture, and household effects; And I direct that after her decease or second marriage (which shall first happen) the same shall fall into the residue of my personal

Bequest of

estate (*Bequest of legacies*): I give all the residue of my

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

residue to trustees.

Upon trust to carry on business until youngest son attains twenty-one.

estate and effects, both real and personal, unto my trustees, upon the trusts and with and subject to the powers and provisions hereinafter declared concerning the same (that is to say), UPON TRUST that my trustees shall continue to carry on the business of ——, now carried on by me at ——, until the youngest for the time being of my four sons, namely (*names of four sons*) shall attain the age of twenty-one years, with liberty for my trustees to use and employ in the said business such part of my residuary estate, or the proceeds thereof, as they may think fit, and with liberty for that purpose to resort to any accumulations of income or profits which may have arisen under the direction to accumulate hereinafter contained, and with liberty also for my trustees to employ any or either of my said sons or any other person or persons to be the manager or managers of the said business, and also to employ such assistants and servants in the said business, and to pay and allow to such manager or managers, assistants and servants such salaries and wages, and generally to conduct and carry on the said business in such manner as my trustees shall in their discretion think fit: AND SUBJECT to the direction hereinbefore contained in relation to the carrying on of the said business, I direct that my trustees shall sell and convert into money my real estate and residuary personal estate, or such part thereof as shall not consist of money, and shall out of the moneys to arise from such sale and conversion, and out of my ready money, pay my funeral and testamentary expenses, and debts, and the legacies hereby bequeathed, and shall invest the residue of the said moneys, &c. (*Trust for investment and varying investments, suprà*, p. 448): AND I FURTHER DECLARE that until the youngest for the time being of my said four sons shall attain the age of twenty-one years, my trustees shall out of the income of my residuary estate, or the investments for the time being representing the same (including as part of such income the profits arising from the said business), in the first place pay to my said wife so long as she shall remain my widow, for her own use, the annual sum of £——, she thereout maintaining and educating such of my children as shall for the time being be under the age of twenty-one years, and if my said wife shall die or marry again before all my children shall have attained the age of twenty-one years, then my trustees shall, out of the said income, pay and apply

And subject thereto, to sell and convert.

Trusts of proceeds.

Until youngest son attains twenty-one, an annual sum to be paid to wife during widowhood for maintenance of infant children.

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

Surplus income to be accumulated.

When youngest son attains twenty-one business to be offered for sale to such son as shall be manager; if no such son, or if he refuses, then to all the sons in order according to seniority: and if all the sons decline, then to be sold to any other person.

Offer to be accepted within given time.

Price to be fixed by valuation.

Proviso that no purchaser shall be bound to inquire whether offer has been made, &c.

Lease to be granted of business

such annual sum as they may think fit for or towards the maintenance and education of such of my children as shall for the time being be under the age of twenty-one years, and shall accumulate the surplus of the said income in the way of compound interest, by investing the same and all the resulting income thereof: And I further declare, that when and so soon as the youngest for the time being of my said four sons shall have attained the age of twenty-one years, my trustees shall offer the said business for sale to any one of my sons who may then be manager of the said business, and if he shall refuse the offer, or if neither of my sons shall then be the manager of the said business, my trustees shall offer the said business for sale to my sons then living (other than any son who may have previously refused as aforesaid) in order one after the other according to seniority of age, and if all my sons shall decline such offer, my trustees shall sell the said business to any person or persons and in such manner as they may think fit: And I declare that each of my sons to whom an offer of sale shall be made as aforesaid shall be allowed ten days within which he must either accept or decline such offer, and if he shall not accept the same within such ten days he shall be deemed to have declined it: And I further declare that if either of my sons shall accept the said offer, the price to be paid for the said business shall be ascertained by the valuation of two indifferent persons, one to be named by my trustees and the other by the purchaser, or in case of their disagreement, by an umpire to be chosen by such two valuers, and if either party shall fail to name a valuer, or to notify it in writing to the other party for the space of ten days after the day on which the offer shall be accepted, or if the valuer named by either party shall refuse or neglect to act, then the valuation shall be made by the valuer of the other party alone: Provided always that no purchaser under this my will shall be obliged or concerned to see or inquire whether the business has been duly offered for sale to my sons as hereby directed, nor whether any such offer shall have been accepted or declined, nor shall the title of such purchaser be afterwards impeached on the ground that the said business had not previously been duly offered for sale as aforesaid, or that any such offer (if made) had not been duly declined: And I further declare that if either of my said sons shall purchase the business as aforesaid, my trustees shall grant to him a lease of the premises at which the business is carried on, consisting of —— (*describing it*), and of all the plant and machinery in and about the same for any term not exceeding fourteen years in possession from the granting of such lease, at a rent the amount whereof shall be determined by valuation in the same manner as is hereinbefore directed with regard to the purchase-money of the business, And the said lease shall contain covenants by the lessee for keeping in repair the said premises and the plant and machinery therein, for substituting plant and machinery of equal value in the place of any that may be removed by the lessee during the term, and for delivering up the said premises, plant, and machinery at the end of the term in as good repair and condition as at the commencement of such term, and such other covenants and conditions as are usual in leases of the like nature: AND I FURTHER DECLARE that if either of my sons shall purchase the business as aforesaid, he shall pay one-third at least of the purchase-money at the time of completing the purchase, but the remaining two-thirds, or any less proportion of the purchase-money, may remain a debt from him to my estate for any period not exceeding five years from the time of completion, and shall be secured in the meantime, with interest thereon, after the rate of £4 per cent. per annum by a mortgage of all the interest of the purchaser under this my will in my residuary estate or the proceeds thereof: AND I FURTHER DECLARE that when and so soon as the youngest for the time being of my said four sons shall have attained the age of twenty-one years, my trustees shall stand possessed of my residuary estate (including the proceeds of the aforesaid business), IN TRUST to pay out of the income thereof the annual sum of £100 to my said wife during her life, if she shall so long remain my widow, by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after the time hereby appointed for the commencement of the same, and subject to the said annual sum, IN TRUST for all my children who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be only one such child, the whole to go to that one child: AND I EMPOWER my trustees, at their discretion, to raise any part not exceeding one moiety of the presumptive share for the time

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

Lease of premises to purchaser of business.

If son purchases one-third of purchase-money to be paid down, and remaining two-thirds may remain on security of his share in residue.

Trusts of residue after youngest child has attained twenty-one.

To pay annual sum to wife during widowhood.

And subject thereto for all the testator's children equally.

Advancement clause.

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

being of any infant child of mine in my residuary estate, and to apply the same for his or her preferment, advancement, or benefit as my trustees shall think fit: I ALSO empower my trustees to postpone the sale and conversion of my real and personal estate, or any part thereof, for so long as they shall think fit, and in the meantime to let or demise any real estate, including chattels real, for any term of years not exceeding twenty-one years, to take effect in possession at such rent and subject to such covenants and conditions as my trustees shall think fit, but without prejudice to the directions hereinbefore contained as to granting a lease of the said business premises to any son of mine who may purchase the said business; AND I DECLARE that any moneys, &c. (*Investment clause; Clause as to appointment of new trustees; suprà*, pp. 450 *to* 452.)

Power to postpone sale and conversion.

IN WITNESS, &c.

No. XIX.

DEVISE OF REAL ESTATE TO SONS SUCCESSIVELY IN TAIL, &c., SUBJECT TO RENT-CHARGE TO WIFE AND BEQUEST OF PERSONALTY IN FAVOUR OF CHILDREN.

WILL *of* REAL *and* PERSONAL PROPERTY; DEVISE *of* FREEHOLDS *in parish of* ——, *to secure Rent-Charge to Wife, and subject thereto to* SONS *successively in* TAIL, *with remainder to* DAUGHTERS *as tenants in* COMMON *in* TAIL, *with* CROSS REMAINDERS (*a*); BEQUEST *of* LEASEHOLD *in same County upon Trust similar to Freeholds;* DEVISE *and* BEQUEST *of Residue of Real and Personal Estate to Trustees upon Trust for Sale and Conversion;* TRUSTS *of* RESIDUARY MONEYS *for all the Testator's Children with usual provisions.*

Appointment of executors and trustees.

I, A. B., of, &c. (*commencement of will*), I APPOINT C. D., of, &c., and E. F., of, &c., hereinafter called "my trustees," to be the executors and trustees of this my will for all the purposes herein expressed, and also for the purposes of the Settled Land

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(*a*) It is unnecessary to give the trustees of the above will a power of sale over the real property, as the powers given by the Settled Land Act are sufficient.

Act, 1882, and for the purposes mentioned in section 42 of the Conveyancing and Law of Property Act, 1881: AND I DECLARE that new trustees may from time to time be appointed for all the purposes aforesaid under section 31 of the last-mentioned Act. I APPOINT my wife, C. B., during her life, and after her death my trustees to be the guardian and guardians of my infant children: I DEVISE all my freehold messuages, tenements, lands, and hereditaments, situate in the parish of ——, in the county of ——, to the following uses (that is to say): TO THE USE that my said wife C. B. may receive thereout during her life a yearly rent-charge of £——, to be paid by equal quarterly payments, the first of such payments to be made at the expiration of three calendar months after my decease: and subject to the said rent-charge, TO THE USE of my first and other sons successively according to seniority in tail, with remainder, TO THE USE of all my daughters in equal shares as tenants in common in tail, with cross remainders between or among them in tail, with remainder, TO THE USE of my own right heirs for ever: AND I DECLARE that if my trustees shall enter into possession of the said hereditaments or any undivided share thereof during the infancy of a tenant in tail by purchase under this my will, and such tenant in tail shall die during infancy, and if a daughter without having been married, then, and in such case, the accumulation (if any) arising during such infancy shall be held upon such trusts as the same would be held upon if the same were capital money arising from any sale of the said hereditaments under the Settled Land Act, 1882: I GIVE AND BEQUEATH all my leasehold messuages, lands, tenements, and hereditaments, situate in the parish of ——, in the county of ——, unto my trustees, for all the estate, term, and interest which I shall at my decease have therein respectively, UPON trust out of the rents and profits of the said premises to pay the rents and observe and perform the covenants by and in the several leases thereof reserved and contained, and on the part of the lessees to be paid, observed, and performed, and subject thereto, UPON SUCH TRUSTS, and with and subject to such powers and provisions as will correspond as nearly as the different tenures will permit with the uses, powers and provisions hereinbefore declared and contained concerning the said freehold hereditaments situate in the same parish, but so as not to multiply charges, and so also that the said leasehold premises shall not vest absolutely in any person

DEVISE OF REAL ESTATE TO SONS SUCCESSIVELY IN TAIL, &c., SUBJECT TO RENT-CHARGE TO WIFE AND BEQUEST OF PERSONALTY IN FAVOUR OF CHILDREN.

Devise of freeholds to use that wife shall take rent-charge for life.

Remainder to sons successively in tail, remainder to daughters as tenants in common in tail.

Direction as to accumulations of rents arising during infancy of tenant in tail.

Bequest of leaseholds upon trust to pay rents, &c.,

and subject thereto upon trusts corresponding with uses of freeholds.

DEVISE OF REAL ESTATE TO SONS SUCCESSIVELY IN TAIL, &c., SUBJECT TO RENT-CHARGE TO WIFE AND BEQUEST OF PERSONALTY IN FAVOUR OF CHILDREN.

Devise and bequest of residuary real and personal estate to trustees upon trust for sale and conversion.

Trusts of residuary moneys.

hereby made tenant in tail by purchase of the said freehold hereditaments, unless such person shall attain the age of twenty-one years, but on the death of such person under that age shall go and devolve as if the same were freehold of inheritance included in the devise of hereditaments of that tenure hereinbefore contained: AND AS TO ALL THE REST and residue of my real and personal estate, I give, devise, and bequeath the same unto my trustees UPON trust, to sell, call in, and convert into money the same, or such part thereof as shall not consist of money, and with and out of the moneys to arise from such sale, calling in, and conversion into money, and out of the money of which I shall be possessed at my death, to pay my funeral and testamentary expenses and debts (other than mortgage debts affecting the said freehold and leasehold hereditaments, situate in the parish of —— aforesaid, hereinbefore devised and bequeathed respectively), and the legacies bequeathed by this my will, or by any codicil hereto, and to invest the residue of the said moneys in, &c. (*Trust for investments and varying investments, suprà*, p. 448): AND I DECLARE that my trustees shall stand possessed of the said residuary moneys, and the investments for the time being representing the same (hereinafter called the residuary trust funds): IN TRUST, &c. (*for children equally, with usual provisions; Investment clause; suprà*, pp. 449 *to* 452).

IN WITNESS, &c.

No. XX.

WILL *of* Real *and* Personal Estate; Bequest *of* Leasehold Dwelling-house *and* Household Effects *to* Wife; Devise *of* Freeholds *to use of Trustees for term of* Five Hundred Years, *with remainder to use that* Wife *may take a* Rent-charge, *and subject thereto to uses in favour of* Sons *and* Daughters *successively in strict settlement, with an ultimate remainder to Testator's* Right Heirs; Trusts *of* Term *of* Five Hundred Years, *to pay* Debts, *&c., in aid of personalty, and then to raise* Portions *for Testator's* Younger Children; Name *and* Arms Clause; Power *to each* Male Tenant for Life *to* jointure *wife, and to each* Female Tenant *for* Life *to appoint* Rent-charge to Husband; Power *to each* Tenant for Life *to charge with portions for* Younger Children; Additional Powers; Devise *and* Bequest *of* Copyholds *and* Leaseholds *to Trustees upon trusts to* Correspond *with uses of* Freeholds; Bequest of Jewels, *&c., as* Heir-looms; Bequest *of* Legacies; Bequest *of* Residue *of Personalty to Trustees upon same trusts as money arising from* Sale *of Real Estate.*

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

I, A. B., of, &c., (*commencement of will, suprà*, p. 447).

Appointment of executors and trustees and guardians.

1. I appoint C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will for all the purposes herein expressed, and also for the purposes of the Settled Land Act, 1882, and for the purposes mentioned in section 42 of the Conveyancing and Law of Property Act, 1881: And I declare that new trustees may from time to time be appointed for all the purposes aforesaid under section 31 of the last-mentioned Act: And I appoint my dear wife —— during her life, and after her death my trustees, to be the guardian and guardians of my infant children.

Bequest of leasehold dwelling-house and household effects.

2. I give and bequeath my leasehold messuage or dwelling-house, situate and being No. —— in ——, in which I am now residing, and the appurtenances, for all my term, estate, and interest therein, and all my books, plate, linen, china, household

goods, furniture, and effects, which shall be in or about the said messuage or dwelling-house at the time of my decease, unto my dear wife —— absolutely.

Devise of real estate.

To trustees for five hundred years.

Subject to term, that wife may take rent-charge.

Subject thereto to eldest son for life, remainder to his sons successively in tail male, remainder to second son and his first and other sons *similiter*, remainder to after-born sons and their first and other sons *similiter*,

remainder to eldest daughter and her first and other sons *similiter*, remainder to second daughter and her first and other sons *similiter* remainder to after-born daughters and their first and other sons *similiter*,

3. I GIVE AND DEVISE my capital messuage, or mansion-house called ——, and all my manors, messuages, lands, tenements, and hereditaments, situate in the county of ——, or elsewhere in England or Wales, and being freehold of inheritance, TO THE USES following (that is to say): TO THE USE of my trustees for the term of five hundred years, computed from the day of my decease, upon the trusts hereinafter declared concerning the same: AND subject thereto, TO THE USE that my wife, &c. (*shall receive a rentcharge for life, suprà*, p. 493); and subject thereto, TO THE USE of my eldest son M. B. during his life, without impeachment of waste, with remainder TO THE USE of his first and other sons successively according to seniority in tail male, with remainder, TO THE USE of my second son N. B., during his life, without impeachment of waste, with remainder TO THE USE of his first and other sons successively according to seniority in tail male, with remainder TO THE USE of my sons hereafter to be born, and their issue male in succession, so that the elder of my after-born sons and his issue male shall be always preferred to and take before the younger of my after-born sons and his or their issue male, and so also that each after-born son of mine shall take an estate for his life without impeachment of waste, with remainder after his decease to the use of his first and other sons successively according to seniority in tail male, with remainder TO THE USE of my daughter O. B., during her life, without impeachment of waste, with remainder TO THE USE of the first and other sons of the said O. B. successively according to seniority in tail male, with remainder TO THE USE of my second daughter P. B., during her life, without impeachment of waste, with remainder TO THE USE of the first and other sons of the said P. B. successively according to seniority in tail male, with remainder TO THE USE of my daughters hereafter to be born, and their issue male in succession, so that the elder of my after-born daughters and her issue male shall be always preferred to and take before the younger of my after-born daughters and her or their issue male, and so also that every after-born daughter of mine shall take an estate for her life without impeachment of waste, with remainder to her first and other sons successively according to seniority in tail

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

remainder to first and other sons of eldest son successively in tail general, remainder to first and other daughters in tail general, remainder to sons and daughters of second and after-born sons *similiter*,

remainder to testator's brother for life, remainders over.

male, with remainder To THE USE of the first and other sons of the said M. B. successively according to seniority in tail general, with remainder, To THE USE of the first and other daughters of the said M. B. successively according to seniority in tail general, with remainder, &c. (*Similar remainders to the first and other sons of N. B. successively in tail general, then to the first and other daughters of N. B. successively in tail general*), with remainder, To THE USE of the sons in succession of every son of mine hereafter to be born and their issue, so that the sons of every elder of my after-born sons and their issue shall be always preferred to and take before the sons of every younger of my after-born sons and their issue, and so also that the sons of each after-born son of mine shall take successively according to seniority in tail general, with remainder To THE USE of the daughters in succession of every after-born son of mine and their issue, so that the daughters of every elder of my after-born sons and their issue shall be always preferred to and take before the daughters of every younger of my after-born sons and their issue, and so also that the daughters of each after-born son of mine shall take successively according to seniority in tail general, with remainder To THE USE of, &c. (*First and other sons of O. B. successively in tail general, then to first and other daughters of O. B. successively in tail general, then to first and other sons and first and other daughters of P. B. successively in tail general, then to first and other sons and first and other daughters of after-born daughters of testator successively in tail general*), with remainder To THE USE of my brother Q. B., during his life, without impeachment of waste, with remainder, &c. (*Remainder to sons and daughters of Q. B., in strict settlement, similar to those to sons and daughters of testator*), with remainder To THE USE of my own right heirs for ever.

Trusts of term of five hundred years.

To raise money to pay debts, &c., in aid of personal estate.

4. THE said hereditaments are hereinbefore limited to my trustees for the said term of five hundred years, upon the following trusts (that is to say): UPON TRUST that my trustees shall in the first place, by mortgage of the premises comprised in the said term, or any part thereof, for all or any part of the said term, or by any other reasonable ways and means, raise in aid of my personal estate (if insufficient) such sum or sums of money as may be required to satisfy my funeral and testamentary expenses and debts, and the legacies bequeathed by

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

To raise portions for younger children of testator,

this my will or any codicil hereto, AND UPON FURTHER TRUST that my trustees shall, by mortgage, sale, or other disposition of the said hereditaments or any part thereof, for all or any part of the said term, or by any other reasonable ways and means raise the sum of £—— for each and every of my children living at my decease who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry (other than and not being a son or daughter entitled for the time being to the said hereditaments under the limitations hereinbefore contained as tenant for life in possession), with power for my trustees at any time or times during the minority of any son of mine (not being a son entitled for the time being as aforesaid) to raise any sum or sums of money not exceeding together the sum of £——, and apply the same for the preferment, advancement, or benefit of such son as my trustees shall think fit, and in part satisfaction of his portion under the trust last hereinbefore declared; AND ALSO shall from and after my decease raise out of the rents and profits of the said hereditaments, and apply for the maintenance and education of each or any son and unmarried daughter of mine entitled for the time being in expectancy to a portion under the trusts aforesaid, such annual sum as my trustees shall think fit, not exceeding in any one year for each such child what the interest of his or her expectant portion would amount to after the rate of £4 per cent. per annum, with liberty for my trustees to pay the same to the guardian or any of the guardians of such child for the purpose aforesaid, without being liable to see to the application thereof: AND UPON FURTHER TRUST that so long as the portion of any child of mine who shall have attained a vested interest therein shall remain unpaid, my trustees shall, out of the rents and profits of the said hereditaments, raise and pay to such child interest thereon after the rate of £4 per cent. per annum by half-yearly payments, and so that if the child to whom interest shall be payable as aforesaid shall be a married daughter under the age of twenty-one years, her receipt shall be a sufficient discharge for the same notwithstanding her infancy: AND UPON FURTHER TRUST that my trustees shall raise by some or one of the ways and means aforesaid such sum or sums of money as shall be required for the payment of the costs and expenses attending the execution of the trusts hereinbefore declared concerning the

and to raise annual sum for maintenance of children entitled in expectancy,

and also to raise interest on unpaid portions,

and to raise costs and expenses.

said term of five hundred years, and shall apply the moneys to be so raised as last aforesaid, in payment of the said costs and expenses accordingly: AND UPON FURTHER TRUST that my trustees shall permit the rents and profits of the said hereditaments, or so much thereof as shall remain after answering the trusts and purposes aforesaid, to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the said term.

Ultimate trust for person entitled in remainder.

5. IF my trustees shall enter into possession of the hereditaments hereinbefore devised during the infancy of any tenant for life or tenant in tail by purchase under the statutory provision in that behalf, and such tenant for life or in tail shall die during infancy, and being a female without having been married, the accumulations (if any) which shall have arisen during such infancy, shall be held upon such trusts as would be applicable thereto if the same were capital money arising from a sale of the said hereditaments under the Settled Land Act, 1882.

Direction as to accumulation of rents during minority of tenant for life or in tail.

6. EVERY person who shall become entitled under this my will to the hereditaments hereinbefore devised as tenant for life or tenant in tail in possession, and who shall not then bear the surname and arms of B., shall within twelve calendar months after he or she shall have become so entitled in possession as aforesaid, or if he or she shall be under the age of twenty-one years, then within twelve calendar months after he or she shall have attained that age, assume the surname and arms of B., and apply for and endeavour to obtain a royal licence or other proper authority for that purpose: And if the person so becoming entitled as aforesaid shall be a female and shall marry, then her husband shall within twelve calendar months after she shall have become entitled in possession as aforesaid, or after her marriage (which shall last happen), also assume the said surname and arms, and apply for and endeavour to obtain a royal licence or other proper authority for that purpose: And if the person so becoming entitled as aforesaid, or in the case of a married woman her husband, shall fail to comply with the direction last hereinbefore contained, not being prevented from so doing by death within the said period, then and in such case, and at the expiration of the said twelve calendar months, the estate of such person under this my will shall cease and determine;

Name and arms clause.

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

And if the person whose estate shall so determine shall be a tenant for life, the said hereditaments shall thenceforth go and remain to the use of my trustees during the life of such person, in trust to permit the rents and profits thereof to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the death of such tenant for life, and so that if the person for the time being entitled as aforesaid shall be a minor, my trustees shall have the same powers of management and of applying and dealing with the said rents and profits as they would have had if the person whose estate shall have so determined as aforesaid were dead; And if the person whose estate shall so determine shall be a tenant in tail, then and in such case the said hereditaments shall immediately go and devolve to the person or persons who would be entitled thereto under this my will if such tenant in tail were then dead without issue.

Power to each tenant for life to appoint rent-charge to wife or husband,

7. It shall be lawful for every person hereby made tenant for life of the hereditaments hereinbefore devised, either before or after he or she shall become entitled under this my will to the possession or receipt of the rents and profits of the said hereditaments, and either before or after his or her marriage, by any deed or deeds, or by his or her will (but subject and without prejudice to the uses and estates (if any) preceding the use or estate of the person making such appointment, and to the powers annexed to such preceding uses and estates, and also subject and without prejudice to the uses or estates (if any) which shall or may be limited in exercise of the same powers (or any of them)), to appoint to any wife or husband of the person for the time being exercising this power for her or his life, any yearly rent-charge not exceeding the yearly sum of £——, to be charged on the said hereditaments, or any part thereof, and to be paid at such times and in such manner as the person exercising this power shall think fit: And also by any deed or deeds or by his or her will (but subject and without prejudice as aforesaid) to charge the said hereditaments or any part thereof with any sum of money for the portions of his or her younger children not exceeding for one child £5000, for two children between them £8000, for three children between them £12,000, or for four or more children between them £15,000, to vest in and be paid to such

and charge with portions for younger children.

child or children at such age or time, ages or times, not being earlier as to any son than his age of twenty-one years, except by way of advancement under any power to be conferred for that purpose as hereinafter is mentioned, nor as to any daughter than her age of twenty-one years or day of marriage, in such shares, if more than one, and in such manner as the person for the time being exercising this power shall direct or appoint: AND ALSO by the same or any other deed, or by his or her will, to limit and appoint the hereditaments comprised in such charge to trustees for any term of years without impeachment of waste upon such trusts for raising the money to be charged for portions as aforesaid, together with the costs and expenses of and incidental to the execution of such trusts as the person for the time being exercising this power shall think fit: AND the person for the time being exercising this power may by such appointment direct or authorize the trustees of the term to be thereby created during the minority of any child who if of full age would be entitled in possession to a portion to raise out of the rents and profits of the hereditaments comprised in the same term or otherwise such annual sum as the person for the time being exercising this power shall direct, or as the said trustees shall think fit, not exceeding what interest on the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and to apply the same for the maintenance and education of such minor, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: AND the person for the time being exercising this power may also, if he thinks fit, by such appointment, authorise the said trustees to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son under such appointment, and to apply the same for the advancement, preferment, or benefit of such son: PROVIDED ALWAYS, that if any tenant for life under this my will shall exercise the power of appointing a rent-charge or of charging with portions conferred by this article before he or she shall under this my will become entitled to the possession or the receipt of the rents and profits of the said hereditaments, then and in every such case the rent-charge or sum of money charged for portions under such exercise of the said power shall not be a lien or charge on the heredita-

and limit term to trustees to raise portions.

Power to authorise trustees to raise annual sum for maintenance of minors entitled to portions in expectancy.

And to raise one half of presumptive portions of sons for advancement.

No rent-charge or portion to take effect in possession unless person appointing same or his issue becomes entitled in possession.

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

ments expressed to be charged therewith, or be payable or carry interest, unless and until the person by whom the same shall have been charged or some issue of his or hers shall, or if of full age, would have become entitled to such possession or receipt as aforesaid: PROVIDED ALSO that the said hereditaments shall not, under the power of appointing rent-charges conferred by this article be at any one time subject or liable to the payment of yearly rent-charges exceeding in the whole (with the said yearly rent-charge of £—— hereinbefore limited to my said wife, if the same shall for the time being be subsisting) the yearly sum of £——, so that if the said hereditaments or any part thereof would, but for this proviso, be charged with a greater yearly sum in the whole than the said sum of £——, the payment of the sum occasioning such excess, or such part thereof as shall occasion the same, shall during the time of such excess be suspended, and for this purpose rent-charges shall have precedence according to the priority in order of limitation of the estates of the persons by whom the same shall have been created: PROVIDED ALSO, that the said hereditaments shall not, under the power of charging with portions conferred by this article, be made subject or liable to the payment of any sum or sums of money exceeding the principal sum of £—— in the whole, and moneys to be charged for portions as aforesaid shall have precedence according to the priority in order of limitation of the estates of the several persons by whom the same shall have been charged.

Proviso limiting the total amount of annual rent-charge under powers.

Proviso limiting the total amount to be charged for portions under aforesaid power.

Definition of term "younger children."

8. THE term "younger children" hereinbefore used with reference to the powers of charging with portions shall be construed to mean and include, 1st, every son of the person for the time being exercising the power (in this article called the appointor) not being at the time when he attains the age of twenty-one years an eldest or only son entitled under this my will to the hereditaments hereby devised for an estate tail in possession or in remainder immediately expectant on the life estate of his parent, or on some estate prior in order of limitation to such life estate; and 2ndly, every daughter of the appointor not being at the time when she attains the age of twenty-one years or when she marries (which shall first happen), an eldest or only daughter entitled for the time being under this my will to the said hereditaments for an estate tail in possession: PROVIDED ALWAYS that the appointor may, if he thinks fit, declare by the

deed or will by which he exercises the said power, that an eldest or only son attaining the age of twenty-one years and dying before his estate tail falls into possession without having disentitled the said hereditaments with the consent of the protector of the settlement shall be deemed a younger son, and in such case but not otherwise he shall be deemed a younger son accordingly (*a*).

Power to convey for building purposes for fee farm rents.

[9. IT shall be lawful for every person for the time being entitled under this my will to the possession or receipt of the rents and profits of the hereditaments hereinbefore devised as tenant for life, if such person shall be of full age, and for my trustees during the minority of any person for the time being entitled under this my will to such possession or receipt as tenant for life or tenant in tail by purchase, and without an order for that purpose to convey, &c. (*power to convey for building purposes for fee farm rents as in Precedent of Settlements No. XXVII., Art.* 8, *suprà*, p. 318)].

[10. It shall be lawful for every person, &c. (*as in last Article down to* "*purchaser*") to raise, &c. (*to raise money for improvements as in Precedent of Settlements No. XXVII., Art.* 9, *suprà*, p. 319.)]

[11. (*Clause as to improvements as in same Precedent, Article* 10, *suprà*, p. 319).]

12. It shall not be necessary for any tenant for life under this my will when intending, &c. (*notice need not be given of intended sales, &c., suprà*, p. 319).

13, 14. (*Clauses as in Precedent of Settlements No. XXVII., Articles* 12, 13, *substituting* "any tenant for life under this my will" *for* "the said A. B.")

Devise and bequest of copyhold and leaseholds to trustees, upon trusts to correspond with uses of freehold.

15. I GIVE, DEVISE, AND BEQUEATH all my messuages, lands, tenements, and hereditaments, wheresoever situate, being copyhold, or leasehold for a life or lives or for years, unto my trustees, IN TRUST, out of the rents and profits of the said copyhold premises, to pay and render the customary rents and services, and out of the rents and profits of the said leasehold premises to pay the rents, and observe and perform the covenants and conditions reserved by and contained in the leases under which the same shall be held, and by and on the lessee's part to be paid, ob-

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(*a*) See p. 329, note (*a*).

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

served, and performed, and subject thereto as to all the said copyhold and leasehold premises, UPON such trusts, and with, under, and subject to such powers and provisions as will correspond as nearly as the difference of tenure will permit, with the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the freehold hereditaments hereinbefore devised, but so as not to increase or multiply charges or powers of charging, and so that any copyhold hereditaments not admitting of the creation of estates tail, and any leasehold hereditaments for years shall not vest absolutely in any person hereby made tenant in tail by purchase of the said freehold hereditaments, unless he or she shall attain the age of twenty-one years, but on the death of such person under that age shall go and devolve as if the same were freehold of inheritance included in the devise of hereditaments of that tenure hereinbefore contained.

Bequest of plate, &c., as heirlooms to go with real estate.

16. I GIVE AND BEQUEATH all my plate, pictures, books, and furniture, which shall at my decease be in or about my said capital messuage or mansion-house, called ——, or belong or be appropriated thereto, unto my trustees, IN TRUST to permit the same to be held and enjoyed as heirlooms by the person or persons for the time being entitled to the said capital messuage or mansion-house under the limitations of this my will as nearly as the rules of law and equity will permit, but so that the said heirlooms shall not vest absolutely in any person hereby made tenant in tail by purchase of the said capital messuage or mansion-house, unless he or she shall attain the age of twenty-one years, but upon the death of such person under that age shall go and devolve to the person or persons who shall thereupon become entitled to the said capital messuage or mansion-house under the aforesaid limitations: AND I DIRECT that an inventory shall be made as soon as conveniently can be after my decease of the plate and other articles hereinbefore bequeathed as heirlooms, and that one copy of such inventory shall be signed by my trustees, and delivered to and kept by the person for the time being entitled to the use of the said heirlooms under this my will, and that one other copy thereof shall be signed by the person for the time being entitled as last aforesaid and retained by my trustees: AND I DIRECT that the person or persons for the time being entitled to the use of the said heirlooms under this my will shall keep the same in a good state of preservation and

Inventory to be made.

Usufructuary to preserve heirlooms,

adequately insured against loss or damage by fire: BUT I expressly declare that my trustees shall not be bound or obliged to see that the said heirlooms are preserved or insured as aforesaid, or be answerable for any loss or injury which may happen thereto, unless in some specific case they or he shall be called on to interfere by some person or persons beneficially interested in the said heirlooms under this my will: and I also direct that the power of selling the said heirlooms or any of them, and of purchasing chattels with the proceeds of such sale conferred by section 37 of the Settled Land Act, 1882, may be exercised by any tenant for life in possession under this my will without its being necessary to obtain an order of the Court for that purpose, provided that such sale or purchase shall be made with the consent of my trustees.

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

but trustees not to be responsible for injury.

Heirlooms may be sold with consent of trustees without Order of Court.

17. I GIVE AND BEQUEATH, &c. (*Bequest of legacies.*)

Legacies.

18. I GIVE AND BEQUEATH all my personal estate not hereby otherwise disposed of unto my trustees, UPON TRUST that my trustees shall call in and convert into money the same or such part thereof as shall not consist of money, and shall with and out of the money produced by such calling in and conversion and with and out of my ready money, pay my funeral and testamentary expenses and debts, and the legacies hereby bequeathed, and shall stand possessed of the residue of the said moneys, upon the trusts which would be applicable thereto if the same were capital money arising from a sale of part of the freehold hereditaments hereinbefore devised under the Settled Land Act, 1882.

Bequest of residuary personalty upon trusts of moneys arising from sale of freeholds.

19. (*Investment clause, suprà*, p. 320, substituting "*this my will*" *for* "*these presents.*")

IN WITNESS, &c. (*a*).

(*a*) In the above Precedent there is no declaration as to the person by whom the statutory power of appointing new trustees is to be exercisable, the provision in this respect in the Act being sufficient.

No. XXI.

OF TESTATOR'S PROPERTY WITH VARIOUS SPECIAL PROVISIONS.

DEVISE *and* BEQUEST *of* REAL *and* PERSONAL ESTATE; BEQUEST *of* PERSONAL ESTATE *to* TRUSTEES *to pay Debts, &c., and* INVEST *surplus and apply income for* MAINTENANCE *of* SON *during his* MINORITY, *and accumulate surplus;* TRUST *for* SON *when he attains* TWENTY-ONE, *but if he should die under twenty-one, then for Sister absolutely;* DEVISE *of* REAL ESTATE *to* TRUSTEES, *subject to Mortgages thereon,* UPON TRUST *to manage and lease same until the Son should attain twenty-one, and subject thereto, to* SON *absolutely, but if he should die a Minor, then to* NEPHEWS *equally in Fee;* DIRECTION *to* TRUSTEES *to apply* RENTS *during minority of* SON *for his* MAINTENANCE, *and accumulate* SURPLUS; POWER *to apply* SURPLUS INCOME *and* ACCUMULATIONS *in Payment of Mortgages and other Debts;* POWER *to concur in* TRANSFER *of* MORTGAGES, *or to* SELL *or* MORTGAGE *for Payment of* MORTGAGES, &c.; GENERAL POWER *of* SALE *or* MORTGAGE *for Payment of* DEBTS; USUAL PROVISIONS.

Bequest of personal estate to trustees.

I, A. B., of, &c. (*commencement and appointment of executors and trustees and guardians, suprà*, pp. 447, 448): I GIVE AND BEQUEATH all my personal estate and effects (except chattels real included in the devise of real estate hereinafter contained) unto my trustees, UPON TRUST that my trustees shall call in and convert into money the same or such part thereof as shall not consist of money, and shall apply the moneys to arise from such calling in and conversion, and the money of which I shall be possessed at my death, so far as the said moneys will extend, in the payment of my funeral and testamentary expenses and debts (including mortgage debts affecting my real estates hereinafter devised), and shall invest the surplus (if any) of such moneys with power for my trustees to vary the investments thereof from time to time, and shall apply the income arising from such in-

Upon trust to convert same into money, and thereout pay debts, &c., and

invest surplus (if any),

and apply income for

vestments in or towards the maintenance of my son G. B., until he shall attain the age of twenty-one years or previously die, with power for my trustees, at their discretion, at any time during the minority of my said son, to sell and convert into money the whole or any part of the said trust funds, and to apply the moneys arising thereby for the advancement, preferment, or otherwise for the benefit of my said son, as my trustees shall think fit, And subject to the trusts aforesaid shall stand possessed of the said trust funds, and the income thereof, or so much thereof respectively as shall not be applied in manner aforesaid, In trust for my said son G. B., as and when he shall attain the age of twenty-one years, but if my said son shall die under that age, then In trust for my sister S. H.: I give, devise, and bequeath all my messuages, farms, lands, tenements, and hereditaments of every tenure, situate at ——, in the county of ——, and all other my real and leasehold estates (if any) whatsoever and wheresoever, (all which premises included in this present devise and bequest are hereinafter called "my real estates") unto and to the use of my trustees, Upon trust that my trustees shall receive the rents and profits of and manage my real estates and every part thereof, as they may think proper, with power to demise or let the same, or any part or parts thereof, either from year to year, or for any term or number of years, either upon repairing, building, or husbandry leases, and generally upon such terms as my trustees shall think proper (yet so that no demise or lease shall be made of any copyhold or customary hereditaments contrary to the custom of the manor or manors of which the same respectively shall be holden), with power to accept surrenders from and make allowances to and arrangements with tenants and others, and with all other powers expedient or desirable for the due management of my real estates, until my said son G. B. shall attain the age of twenty-one years or previously die: And upon trust that my trustees do and shall assure my real estates (subject to the mortgages, incumbrances and charges then existing thereon) unto and to the use of my said son G. B., absolutely when and so soon as he shall attain the age of twenty-one years: But if my said son shall die under the age of twenty-one years, then Upon trust that my trustees do and shall assure the same (subject as aforesaid) unto and to the use of my

maintenance of testator's son.

Power to raise money for advancement of son and subject to aforesaid trusts, in trust for son absolutely, on his attaining twenty-one. If he should die under twenty-one then to sister absolutely.

Devise of real estate.

To trustees (subject to charges thereon), upon trust to manage and lease same until son attains twenty-one,

and subject thereto to son in fee, if son dies under twenty-one, to nephews

OF TESTATOR'S PROPERTY WITH VARIOUS SPECIAL PROVISIONS.

Direction to keep down interest on mortgages during son's minority.

nephews, L. M. and N. O., absolutely, as tenants in common in equal shares: AND DURING THE MINORITY of my said son I direct that my trustees shall apply the net rents and profits of my real estates in the first place in and towards payment of the interest which for the time being shall be due and payable in respect of the mortgage debts affecting the same, or such of the said debts as shall for the time being remain due and unsatisfied, in aid of my personal estate, and shall in the next place apply the said rents and profits, or any part thereof, for or towards the maintenance or education, or otherwise for the benefit of my said son, and shall invest the surplus (if any) of such rents and profits so as to accumulate at compound interest, with liberty to vary the investments thereof from time to time, and shall stand possessed of the said accumulations, IN TRUST for the person or persons who shall become absolutely entitled to my real estates under the trusts hereinbefore declared, with liberty nevertheless for my trustees to resort to the accumulations of any preceding year or years, and to apply the same in any succeeding year or years for the maintenance and education, or otherwise for the benefit of my said son; and with liberty also for my trustees, at any time or times, to apply the said surplus rents and profits and the accumulations thereof, or any part or parts thereof respectively in or towards the payment and discharge of the mortgage debts and principal moneys which for the time being shall affect my real estates or any of them, or my other debts generally, or any part or parts thereof respectively: AND I AUTHORISE and empower my trustees at any time or times, or from time to time during the minority of my said son, to join in any transfer of any mortgage or other charge or incumbrance upon all or any part of my real estates, or to give further security for, or to pay off all or any part of the money secured by any such mortgage, charge, or incumbrance, and for that purpose to adjust and settle any accounts with any mortgagee or incumbrancer, and if my trustees shall think fit, to raise any further sum or sums in order to discharge any such mortgage, charge, or incumbrance, and the interest thereon respectively, together with the costs of procuring and raising the same, either by mortgage or by absolute sale, or other disposition of all or any part of my real estates, or by, with, or out of the rents and profits of my real estates, or any of them, or by any other reasonable ways and means, and to

Power of maintenance and accumulation of surplus.

Power to apply accumulations in payment of debts.

Power to concur in transfer of mortgages, &c., or to sell or mortgage for payment of mortgages.

apply the moneys so to be raised in discharge of such mortgage, charge, or incumbrance accordingly: AND I ALSO empower my trustees, by mortgaging, selling, or otherwise disposing of my real estates, or any of them, or by, with, and out of the rents and profits of my real estates, or any of them, or by all or any of the aforesaid ways or means, or by any other reasonable ways or means, to levy and raise any sum and sums of money which my trustees may think fit to levy and raise for the payment of my funeral and testamentary expenses and my other and remaining debts, and to pay and apply the moneys to be levied and raised by the ways and means aforesaid in or towards satisfaction and discharge of my funeral and testamentary expenses and debts accordingly: PROVIDED ALWAYS, that as between the person or persons entitled to my personal estate, and the person or persons entitled to my real estates, my personal estate is to be considered as the primary fund, and my real estates the secondary fund, for the payment of my funeral and testamentary expenses, and my mortgage and other debts: AND I DECLARE that every mortgage made under the foregoing powers may contain any powers and provisions which my trustees shall think proper, and that no purchaser or mortgagee of any part of my real estates, upon any sale or mortgage expressed to be made under the trusts and powers of this my will, shall be bound or concerned to see whether my personal estate shall have been insufficient for the payment of my debts, nor whether the money paid or advanced by him is actually wanted or ought to be raised for all or any of the purposes aforesaid, or otherwise as to the necessity or propriety of such sale or mortgage, nor shall such purchaser or mortgagee be affected by notice that such sale or mortgage is unnecessary or improper. (*Investment clause, suprà*, p. 450.)

General power of sale or mortgage for payment of other debts.

Personal estate to be nevertheless primary fund for payment of debts.

IN WITNESS, &c.

No. XXII.

APPOINTMENT UNDER A POWER AND SPECIAL TRUSTS FOR DAUGHTERS.

WILL *of a* FEMALE: APPOINTMENT (*a*) *by* TESTATRIX *of* TRUST MONEYS *comprised in a Settlement to secure* LEGACIES *for five* CHILDREN, *and to pay the residue to* TRUSTEES, *upon Trust to* INVEST *the same, and to apply the income for the* MAINTENANCE *of one of the* TESTATRIX'S DAUGHTERS *as the* TRUSTEES *may think fit; After the attempt of* DAUGHTER *to anticipate the same, to apply the Income during her life for the benefit of the* TESTATRIX'S *other* CHILDREN, *as the* TRUSTEES *may think fit; After her decease the* TRUST MONEYS *to be in trust for five* CHILDREN *equally;* BEQUEST *of* FURNITURE *to* TRUSTEES *for use of another* DAUGHTER, *and after her decease to divide same amongst surviving* CHILDREN; INVENTORY *of* FURNITURE *to be made;* DEVISE *and* BEQUEST *of* RESIDUARY *Real and Personal* ESTATE, *upon Trust to convert the same into Money, and to invest sufficient* MONEYS *to secure first-named* DAUGHTER *a certain annual sum during her* LIFE, *and also to set apart a further sum;* TRUSTS *of Residuary* MONEYS *as to four fifth parts thereof for four* CHILDREN *equally; The remaining fifth part and the further sum directed to be set apart to be held by the* TRUSTEES *upon Trusts for one of Testatrix's* DAUGHTERS *and her* CHILDREN; HOTCHPOT *clause;* TRUSTS *in default of* CHILDREN; *Power to advance* MONEYS *to* HUSBAND *on his security.*

Recite settlement, giving power of appointment to testatrix.

I, A. B., of, &c. (*commencement and appointment of executors and trustees, see suprà*, pp. 447, 448): WHEREAS by an indenture dated the —— day of —— and made between (*parties*), a moiety of £5316 11*s.* 10*d.* £3 per Cent. Consolidated Annuities, standing in the names of L. M. and N. O., was settled upon the trusts therein and in part hereinafter mentioned (that is to say),

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(*a*) Where a will is made under a general power, the executors of the testator can give a good discharge for the appointed fund without the concurrence of the beneficial appointees: *Re* Hoskin's Trusts, 6 Ch. D. 281.

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from and after my decease, and the decease of my late husband (subject as therein mentioned), In trust for such person or persons, subject to such conditions, and in such manner as I, notwithstanding my coverture, and whether sole or covert, by any deed or deeds executed as therein mentioned, or by my will should appoint:

Death of husband leaving six children.

And whereas my said late husband died in the year ——, leaving issue of our said marriage, six children and no more (*viz.*), C. B., D. B., E. B., now E. P. (wife of R. P. of, &c.), F. B., G. B., now G. S. (the wife of J. S. of, &c.), and H. B.:

That power has not been exercised.

And whereas I have not hitherto, either wholly or partially, exercised the power of appointment given or reserved to me by the said recited indenture:

Desire to exercise testamentary power.

And whereas I am desirous of exercising the said power of appointment, and of devising and bequeathing all my property, both real and personal, in manner hereinafter mentioned:

Appointment by testatrix of trust moneys comprised in settlement.

to raise legacies for five children, and to pay residue to trustees.

And to apply the income for the maintenance of one of the testatrix's daughters as the trustees may think fit.

Now in exercise and execution of the said power for this purpose given to me by the said recited indenture, and of all other powers enabling me in this behalf, I do by this my will appoint that the said L. M. and N. O., their executors, administrators, and assigns, shall, with all convenient speed after my decease, with and out of the said moiety of £5316 11*s.* 10*d.* £3 per Cent. Consolidated Annuities so settled by the said recited indenture as aforesaid, and the trust moneys, stocks, funds, and securities into which the same moiety or any part thereof may for the time being be converted (which moiety, stocks, funds, and securities, are hereinafter called the settled trust funds), raise and pay the sum of £20 to each of my said children, D. B., E. P., F. B., G. S., and H. B., for their respective absolute benefit, and shall transfer and pay the surplus of the settled trust funds unto my trustees, Upon trust during the life of my said daughter C. B. to apply the income of the said surplus in such manner as my trustees shall in their uncontrolled discretion think proper and most beneficial for the maintenance, support, and comfort of my said daughter C. B., until she shall assign, charge, or otherwise dispose of the said income or some part thereof, by way of anticipation, or attempt so to do, or shall do or suffer some act or thing whereby the said income, if payable to herself, would become vested in some other person or persons:

After attempt of daughter to anticipate the same, to apply the income during her life for the benefit of other chil-

And if she shall make any such assignment, charge, or other disposition, by way of anticipation, or attempt so to do, or suffer any such act or thing as aforesaid, Then upon trust during the remainder of the life of my said daughter C. B., to apply the said income in such manner as they shall in their uncontrolled discretion think proper, for the maintenance and support, or otherwise for the benefit of all or any one or more exclusively of the other or others of my said children: AND FROM and immediately after the decease of my said daughter C. B., the said surplus of the settled trust funds shall be IN TRUST for my said five children, D. B., E. P., F. B., G. S., and H. B., in equal shares absolutely, I BEQUEATH all my furniture, plate, linen, china, books, and household effects, unto my trustees, upon trust that my trustees shall permit my said daughter H. B. (if she shall not have been married at the time of my decease) to have the use thereof during her life, and shall at her decease, or immediately upon my decease if she shall have been married in my lifetime, divide the same as fairly and equally as conveniently may be, according to the uncontrolled judgment and discretion of my trustees, amongst such of my said six children (if any) as shall be then living: And in case none of my said children shall be then living, the same furniture, plate, linen, china, books, and household effects, shall sink into and form part of my residuary personal estate hereinafter bequeathed: AND I DIRECT that in case the aforesaid bequest of the said furniture, plate, linen, china, books, and household effects in trust for my said daughter H. B. for her life shall take effect, my trustees shall, as soon as conveniently may be after my decease, cause an inventory thereof to be taken, and two copies to be made of the said inventory, and my trustees shall sign each of the said copies, and cause each of them to be signed by my said daughter, and shall keep one of the said copies, and leave the other with her: AND I DECLARE that after the delivery of the said furniture and effects to my said daughter, my trustees shall not be liable to see to the preservation thereof, nor be answerable for any loss or injury thereof which may happen during the continuance of my said daughter's interest therein: I GIVE, DEVISE, AND BEQUEATH all my real and personal estate not hereby otherwise disposed of unto my trustees, UPON TRUST, &c. (*Trusts for sale and conversion into money, suprà*, p. 448); AND SHALL out of the residue of the said moneys set apart and invest in the name of my trustees in or upon any of the stocks, funds,

dren as the trustees may think fit.

After her decease the trust moneys to be in trust for five children equally.

Bequest of furniture, &c., to trustees for use of another daughter.

After her decease to divide the same among surviving children.

Inventory of furniture to be made.

Devise and bequest of residuary real and personal estate upon trust to convert the same into money, and to invest

APPOINTMENT UNDER A POWER AND SPECIAL TRUSTS FOR DAUGHTERS.

sufficient moneys to secure to first-named daughter a certain annual sum during her life,

or securities hereinafter authorised as investments, a sum of money the income whereof when so invested will (at the time of such investment), together with the then income of the surplus of the settled trust funds hereinbefore appointed in trust for the maintenance, support, and comfort of my said daughter C. B., make up the clear annual sum of £——, with power for my trustees from time to time, at their discretion, to vary the said investments into or for others of the same or a like nature, and shall, during the life of my said daughter C. B., apply the income of the fund to be so appropriated as aforesaid, in the same manner and with the same directions as are hereinbefore declared concerning the income of the surplus of the settled trust funds during the life of the said C. B.: And from and after the decease of the said C. B. the said appropriated fund shall sink into and form part of the ultimate residue of the proceeds of my real and personal estate, the trusts whereof are hereinafter declared: And upon further trust that my trustees shall out of the proceeds of my real and personal estate set apart the further sum of £—— for the purposes and subject to the provisions hereinafter contained concerning the same: And subject to the trusts aforesaid, the ultimate residue of the proceeds of my real and personal estate shall be divided into five equal parts or shares, and my trustees shall stand possessed of one such fifth part or share, In trust for my said son D. B. absolutely, and of one other such fifth part or share, In trust for my said son F. B. absolutely, and of one other such fifth part or share, In trust for my said daughter G. S. absolutely, and of one other such fifth part or share, In trust for my said daughter H. B. absolutely: And I declare that my trustees shall stand possessed as well of the said sum of £—— so hereinbefore directed to be set apart by them as aforesaid, as also of the remaining one equal fifth part or share of the ultimate residue of the proceeds of my real and personal estate, Upon trust that my trustees shall invest the same, with power from time to time to vary the investments thereof, and shall stand possessed of the moneys last hereinbefore directed to be invested, and the stocks, funds, and securities, in or upon which the same shall be invested (hereinafter called E. P.'s portion), upon the trusts following (that is to say), In trust to pay the income thereof to my said daughter E. P. during her life for her

and also to set apart a further sum.

Trusts of residuary moneys as to four fifth parts thereof for four children equally.

The remaining fifth part and the further sum directed to be set apart to be held by the trustees upon trusts for one of testatrix's daughters and her children.

APPOINTMENT UNDER A POWER AND SPECIAL TRUSTS FOR DAUGHTERS.

separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation: AND AFTER the decease of the said E. P., IN TRUST for all or such one or more of the children and remoter issue of the said E. P. (such remoter issue being born in her lifetime), at such ages or times, age or time, in such shares, if more than one, and generally in such manner as the said E. P. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST, &c. (*Trusts for the children of E. P. equally, suprà*, p. 449, *mutatis mutandis*): PROVIDED ALWAYS, that no child of my said daughter E. P., who or whose issue shall take any part of E. P.'s portion under any such appointment as aforesaid, shall be entitled to any share of the unappointed part thereof, without bringing the share or shares appointed to him or her, or his or her issue, into hotchpot, unless my said daughter shall by such appointment direct the contrary (*and direction as to shares of infant married women, and power of advancement for children of E. P., suprà*, p. 449, *mutatis mutandis*): AND IN CASE there shall be no issue of my said daughter in whom E. P.'s portion shall become absolutely vested under this my will, the same portion shall (subject and without prejudice to the trusts, powers, and purposes aforesaid) remain and be upon such trusts as the said E. P. shall by her will appoint (*and in default of appointment for her next of kin, according to the Statutes of Distribution, suprà*, p. 235): AND I HEREBY EMPOWER my trustees at any time or times, upon the written request of my said daughter E. P., to advance and lend to her said husband the said R. P., at interest on his personal security, and on security of a policy or policies of assurance on his life in an amount equal to the sum or sums to be so lent, the whole or any part of E. P.'s portion: PROVIDED ALWAYS, that in every such case the said R. P. shall enter into a covenant with my trustees for keeping on foot such policy or policies of assurance, and for paying all future premiums thereon: but my trustees shall nevertheless have full power, with the written consent of my said daughter E. P. during her life, and after her decease at their discretion, to apply any part of the income of E. P.'s portion in or towards payment of the premium or premiums on any such policy or policies (*Investment clause, suprà*, p. 450).

Hotchpot clause.

Trusts in default of children.

Power to advance moneys to husband on his security.

IN WITNESS, &c.

No. XXIII.

WILL *of a* Married Woman: Appointment *by her under a power contained in a* Settlement *of a share of* Trust Moneys *in favour of her* Husband *for life, and after his decease in favour of her surviving* Children *and the issue of* Children *dying in her lifetime.*

OF A MARRIED WOMAN.

Recite settlement.

whereby a share of moneys arising from sale of freehold and leasehold estates is settled,

in trust for testatrix for life, after her decease in trust for her children as she should appoint by will.

Number of children.

Appointment of trust moneys pursuant to power.

I, A. B. (*testatrix*), the wife of, &c., HEREBY DECLARE this to be my last will and testament: Whereas by an indenture dated the —— day of ——, and made between my late father, C. D., since deceased, of the one part, and E. F., of, &c., and G. H., of, &c., of the other part, a certain part or share of the moneys to arise from the sale of certain freehold and leasehold hereditaments and premises in the same indenture comprised, and of the rents and profits of the same premises, and the accumulations thereof, from and after the death of my said father, and until the same should be sold, were limited and settled, In trust for myself for my separate use for life, and after my death In trust for all or such one or more exclusively of the other or others of my children and remoter issue (such remoter issue being born in my lifetime), in such shares and manner as I should by my last will and testament, notwithstanding my coverture, give, bequeath, direct, or appoint the same, with a further power for me by my said will to direct that the dividends and interest given in trust to me as aforesaid might be paid to any husband of mine for his life: And whereas I have eight children now living, all of whom have attained the age of twenty-one years, Now therefore in exercise of the powers for this purpose given to me by the said indenture, and of all other powers (if any) in anywise enabling me in this behalf, I do by this my last will and testament direct and appoint that all and every the trust moneys by the said indenture directed to be held in trust for me, my children, and remoter issue, and over which I have such power of appointment as aforesaid, shall from and after my decease remain and be, and that the trustees or trustee for the time being of the same indenture shall stand possessed thereof, Upon trust and to the intent that the income thereof

OF A MARRIED WOMAN.

To husband for life.

After his decease for children of testatrix and issue of children dying in her lifetime, such issue to take parent's share.

may be paid to my said husband —— in case he shall survive me, and his assigns during his life, and that from and after his decease the same trust moneys and premises shall remain and be IN TRUST for all my children living at my decease and such child or children living at my decease of any child or children of mine who may die in my lifetime as being male shall attain the age of twenty-one years, or being female shall attain that age or marry, in equal shares, except that the children of any deceased child of mine who may become entitled to a share of the said trust moneys under this my will shall take between them the share only which his, her, or their parent would have taken if such parent had survived me: AND I APPOINT the said (*trustees of settlement*) to be the executors of this my will.

IN WITNESS, &c.

No. XXIV.

OF A SHIPBROKER.

WILL *of a* SHIPBROKER, *containing* SPECIAL PROVISIONS *with regard to his* BUSINESS.

Commencement of will.

Recites articles of partnership.

I, A. B., of, &c. (*commencement of will and appointment of executors and trustees, see* pp. 447, 448): WHEREAS I carry on the business of a shipbroker, at —— aforesaid, in partnership with ——, pursuant to articles of partnership dated the —— day of ——, by which articles it was (among other things) provided that the said partnership should continue for the term of —— years from the —— day of ——, AND it was also provided that if I should die during the continuance of the said partnership, the amount of capital belonging to me should remain in the said partnership for the remainder of the term of ten years, at interest at the rate of £5 per cent. per annum, and that the surviving partners or partner should during the residue of the said term pay to my widow a sum equal to one-half part of the annual profits of the said partnership, AND it was also provided that in the event of my death, before introducing a son into the partnership, my widow should be entitled to introduce one of my sons into the said partnership, and in such case he should be entitled to one-tenth share of the said partnership business, of which he should receive one-twentieth from my widow and one-twentieth from the said ——: Now I HEREBY AUTHORISE AND EMPOWER my trustees to make such arrangements as may seem to them desirable for carrying into effect the provisions of the said articles of partnership so far as the same shall be in force at my decease, with liberty to determine in such manner as may be advised by counsel or otherwise, any question which may arise as to the construction of the said articles or otherwise in relation thereto: AND I ALSO AUTHORISE AND EMPOWER my trustees, if they shall think fit so to do, to vary the provisions of the said articles of partnership in such manner as may be agreed on between my trustees and my surviving partners or partner, but so that no such variation shall be made as will affect my widow without her consent, AND (subject to the provisions of the said articles of partnership, if and so long as the same shall remain in force) I AUTHORISE AND EMPOWER my trustees to continue the said business for such period after my decease as they may think fit, with liberty to carry on the same either alone or in partnership with the persons or person (if any) who shall be my partners or partner at my decease or with any other person or persons, and upon such terms as to division of profits and otherwise as may be agreed on, and with liberty also to employ in the said business the whole or any part of my capital which shall be employed therein at my decease, and also such further part (if any) of my estate and effects as to my trustees shall seem proper, and with liberty also to employ such managers, agents, and clerks in or about the said business, and to allow to them such salaries and wages as my trustees shall think fit: AND my trustees shall have the fullest powers and discretions as to the mode of conducting the said business and otherwise in relation thereto as if they were the absolute owners thereof: AND I ALSO AUTHORISE AND EMPOWER my trustees (subject as aforesaid) to make such arrangements as may seem to them desirable for the introduction at any time or times into the said business of any one or more of my sons whom my trustees shall think fit to introduce into the said business, and for the employment of such son or sons in the said business in the meantime as a manager or clerk or in any other capacity at such salary or wages and upon such terms as my trustees shall think fit: AND I

Power to trustees to make arrangements for carrying into effect articles of partnership,

and to vary articles.

Power to trustees to continue business.

Power to make arrangements for introduction of son into business,

and to advance

FURTHER AUTHORISE AND EMPOWER my trustees at their discretion, to advance and lend to any son or sons of mine who shall be introduced into the said business as aforesaid either alone or jointly with his or their partners or partner (if any) or to continue in the possession or under the control of such son or sons either alone or jointly as aforesaid, the whole or any part of my estate and effects for the time being employed in such business, and also if my trustees shall think fit any further part of my estate and effects for such time and upon such terms and conditions, and either with or without security, as my trustees shall think fit: AND I DECLARE that the capital so advanced or lent to or left in the possession or under the control of such son or sons either alone or jointly as aforesaid shall be considered as a debt to my estate, and shall bear interest after the rate of £5 per cent. per annum, but any son or sons of mine introduced into the said business as aforesaid shall not pay anything to my estate for the goodwill of the said business: PROVIDED ALWAYS AND I FURTHER DECLARE, that my trustees may (if they think fit) leave the entire management of the said business while so continued as aforesaid to the other partner or partners (if any), or if there shall be no such partner, then to a manager or managers to be appointed for that purpose by my trustees, and my trustees shall be under no obligation to attend personally to the said business or be in anywise responsible for any loss which may arise by their omission to attend personally to the said business or to interfere therein: AND ALSO, that if one or more of my trustees for the time being shall be unwilling to engage in and continue such business as aforesaid, he or they may allow his or their co-trustee or co-trustees to engage in and continue the same and to act alone in relation to the trusts of this my will so far as regards such business; AND I ALSO DECLARE that my trustees for the time being carrying on the said business shall be entitled to retain and divide between themselves for their own use the annual sum of £—— out of the profits of the said business as a remuneration for their trouble: AND (subject to the said articles of partnership) I AUTHORISE AND EMPOWER my trustees to discontinue and wind up the said business so far as regards my estate either immediately after my decease or at such other time or times as they shall think fit, and to make such arrangements in relation thereto as they may deem proper, and in particular my trustees may

OF A SHIP-BROKER.

Capital to son so introduced.

Power to leave management of business to partners,

or to co-trustee.

Trustees to be entitled to allowance for carrying on business.

Power to wind up business.

leave to any partner, agent, or other person the collection of any outstanding debts, and may give such time as my trustees shall think fit for payment by any partner or partners of the sum which under any such arrangement as aforesaid shall become payable by him or them to my estate, and either with or without security, and may appoint or concur in appointing such accountants, valuers, and other persons as may be deemed proper for taking the accounts of the said partnership and for valuing any matters which may be capable of valuation, and may settle and adjust accounts, may refer to arbitration, or otherwise compromise and settle any questions and differences, and generally shall have the fullest powers and discretion in relation to the winding up of the said business so as if they were the absolute owners thereof. (*Then follows the disposition of the testator's general estate.*)

OF A SHIP-BROKER.

IN WITNESS, &c.

No. XXV.

WILL *by a* TENANT FOR LIFE *in* REMAINDER *of* SETTLED ESTATES, *in exercise of* POWERS *of* JOINTURING *and* CHARGING *with* PORTIONS *for* YOUNGER CHILDREN, *subject to the* PRIOR LIMITATIONS *contained in the* WILL *creating the powers.*

WILL IN EXERCISE OF POWERS OF JOINTURE AND CHARGE WITH PORTIONS.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c.: WHEREAS my late father, X. B., Esq., deceased, by his will dated, &c. (*Recite will of testator's father devising freehold estates to his eldest son Y. B. for life, with remainder to Y. B.'s first and other sons in tail male, with remainder to his second son (the present testator) for life, with remainder to his first and other sons in tail male, with divers remainders over. Power to each tenant for life to jointure and charge with portions and maintenance for younger children in the usual form*): AND WHEREAS my elder brother Y. B. is living, but he has no issue: AND WHEREAS I have several children by C. B. my wife, all of whom are infants: AND WHEREAS I am desirous of exercising the several powers of jointuring my wife and of charging with por-

Commencement.

Recite will of testator's father, and that testator has several children.

tions and maintenance for my younger children given to me by my father's said will as aforesaid in the manner hereinafter expressed, and I am also desirous of disposing of my own estate and effects in the manner hereinafter expressed: Now I HEREBY REVOKE all former wills and testamentary appointments and dispositions made by me, and declare as follows:—

Testator in exercise of power appoints a jointure to his wife.

1. IN exercise and execution of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY APPOINT unto my said wife a yearly rent-charge of £500 to be charged upon and payable out of all and singular the hereditaments devised in strict settlement by my father's said will aforesaid, and to commence from my decease or from the decease and failure of issue male of the said Y. B. (which shall last happen), the said yearly rent-charge to be paid by equal quarterly payments, the first of such payments to be made on the expiration of three calendar months after the time hereby appointed for the commencement of the said rent-charge, &c.

Power of distress and entry.

Testator in exercise of power, charges settled estates with portions.

2. IN exercise and execution of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY CHARGE all and singular the hereditaments devised in strict settlement by my father's said will with the sum of £15,000 for the portions of such of my younger children as being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry in equal shares, and for this purpose the expression "younger children" shall be construed to mean and include every daughter of mine, and also every son not being at his birth or becoming during his minority an eldest or only son entitled to the said hereditaments for an estate tail in possession or in remainder immediately expectant on some estate prior in order of limitation to my life estate: AND I DECLARE that if any son of mine being an eldest or only son, when he attains the age of twenty-one years, shall afterwards die before his estate tail under my father's said will falls into possession, and without having disentailed the said hereditaments or any part thereof, with the consent of the said Y. B. as the protector of the settlement, such son shall also be deemed a younger son for the purpose of this charge (a): PROVIDED ALWAYS that if only one younger child

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(a) See Notes at pp. 311, 329, *suprà*.

WILL IN EXERCISE OF POWERS OF JOINTURE AND CHARGE WITH PORTIONS.

of mine being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, such child shall have the sum of £5000 only for his or her portion, and if two younger children of mine and no more being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, such two children shall have between them the sum of £8000 only for their portions, and if three younger children of mine and no more being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, such three children shall have between them the sum of £12,000 and no more for their portions, AND in either of the aforesaid cases the said sum of £15,000 shall be reduced to an amount sufficient to provide the said sum of £5000, £8000, or £12,000 as the case may be required for such portion or portions, together with such sum or sums of money (if any) as may be applied for the benefit of a son or sons who shall not live to attain a portion or portions under the power of advancement hereinafter contained, and the difference between the said sum of £15,000, and such reduced amount shall sink into the said hereditaments and cease to be charged thereon.

Testator limits settled estates to trustees for a term of 500 years.

3. IN exercise of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY APPOINT that (subject and without prejudice to the uses and estates preceding my estate for life under my father's said will and to the powers annexed to such preceding uses and estates, and to the uses and estates limited in exercise of such powers, and subject and without prejudice also to the yearly rent-charge hereinbefore limited to my said wife and to the said powers and remedies for enforcing payment thereof) all and singular the hereditaments devised in strict settlement by my father's said will shall go, remain, and be TO THE USE of C. D., of, &c., and E. F., of, &c., for the term of five hundred years, computed from my decease, without impeachment of waste, UPON TRUST that the said trustees shall (subject to the trusts hereinbefore declared for securing the payment of the said yearly rent-charge), by mortgage, or other disposition of the said hereditaments, or any part thereof, for all or any part of the said term, or by and out of the rents and profits thereof, or by any other reasonable ways or means, levy and raise such

Further trust to raise money for portions of younger children.

WILL IN EXERCISE OF POWERS OF JOINTURE AND CHARGE WITH PORTIONS.

sum of money as under the foregoing charge in that behalf shall become payable for a portion or portions as aforesaid, at the time or respective times when the same shall so become payable, and shall pay and apply the moneys to be so raised accordingly: PROVIDED ALWAYS, that it shall be lawful for the said trustees at any time or times after my decease, or the decease and failure of issue male of the said Y. B. (which shall last happen), at the discretion of the said trustees, to raise by the ways and means aforesaid, or any of them, any part or parts not exceeding together the moiety of the vested or expectant portion of any child under the foregoing charge, and to apply the same for the advancement, preferment, or benefit of such child, in such manner as the said trustees shall think fit: AND UPON FURTHER TRUST that in case at my decease or at the decease and failure of issue male of the said Y. B. (which shall last happen), any child of mine entitled for the time being in expectancy to a portion under the trust aforesaid, shall be under the age of twenty-one years, then and in such case the trustees of the said term shall thenceforth during the minority of each such child by some or one of the ways and means aforesaid, levy and raise such annual sum as the said trustees shall think fit, not exceeding interest after the rate of £4 per cent. per annum on the amount of his or her expectant portion under the trusts aforesaid, and shall apply the same annual sum for or towards the maintenance and education of such child, in such manner as the said trustees or trustee shall think fit, with liberty for the said trustees to pay the same annual sum to the guardian or any of the guardians of such child for the purpose aforesaid, without being liable to see to the application thereof: AND UPON FURTHER TRUST that so long as any portion which shall for the time have become payable shall remain unpaid, the trustees, &c. (*trust to raise interest on unpaid portions, suprà*, p. 498): AND UPON FURTHER TRUST that the said trustees do and shall by some or one of the ways and means aforesaid, levy and raise such sum or sums of money as shall be sufficient for payment of the costs and expenses incurred by them or him in or about the execution of the trusts of the said term, and shall pay and apply the moneys to be so raised in payment of such costs and expenses accordingly: AND (subject to the trusts hereinbefore declared) do and shall permit the rents and profits of the said hereditaments, or so much

Advancement clause.

Further trust to raise annual sum for maintenance of children entitled to expectant portions.

Further trust to raise costs and expenses,

and to pay surplus rents to reversioner.

WILL IN EXERCISE OF POWERS OF JOINTURE AND CHARGE WITH PORTIONS.

thereof as shall not be required for any of the purposes aforesaid, to be received by the person or persons entitled for the time being to the said hereditaments in reversion or remainder immediately expectant on the said term.

Bequest of legacies.

4. I BEQUEATH the following legacies (that is to say) (*Bequest of legacies.*)

Bequest of residue to wife.

5. I GIVE, DEVISE, AND BEQUEATH all the rest, residue, and remainder of my property, whether real or personal, unto my said wife absolutely.

Appointment of executors and guardians.

6. I APPOINT my said wife and the said C. D. and E. F. executrix and executors of this my will: AND I APPOINT my said wife during her life, and after her decease the said C. D. and E. F. and the survivor of them, the guardian and guardians of my infant children.

IN WITNESS, &c.

No. XXVI.

WILL *giving a* FARM *to his* WIFE *for life, then to his* ELDEST SON, *and* RESIDUE *to* WIFE: APPOINTMENT *of* EXECUTRIX, *and* TRUSTEES *for purposes of* SETTLED LAND ACT (*a*). (*Short form.*)

FARM TO WIFE FOR LIFE, AND THEN TO SON.

Devise of farm to wife for life, then to son absolutely, and residue to wife.

Appointment of wife to be executrix, and wife and son to be trustees for purposes of Settled Land Act.

THIS IS THE LAST WILL of me, A. B., of, &c.: I GIVE my farm and lands in the parish of ——, called —— Farm, to my wife, C. B., during her life, and after her death to my eldest son, D. B., absolutely: And I give all the rest of my property to my said wife: AND I APPOINT my said wife to be the executrix of this my will, and my said wife and son to be the trustees of this my will as regards the said farm and lands for the purposes of the Settled Land Act, 1882; and if my said son dies in the lifetime of my said wife, I empower her to appoint a new trustee for the purposes aforesaid in his place.

IN WITNESS, &c.

(*a*) Under this precedent the wife may sell or lease the farm, after giving notice of her intention in that behalf to the son, under the Settled Land Act, 1882.

No. XXVII.

CODICIL APPOINTING NEW TRUSTEE IN PLACE OF DECEASED TRUSTEE.

CODICIL *appointing a* TRUSTEE *and* EXECUTOR *in the place of a* DECEASED TRUSTEE *and* EXECUTOR *appointed by the* TESTATOR'S WILL.

THIS IS A CODICIL TO THE LAST WILL AND TESTAMENT of me, A. B., of, &c., which will bears date the —— day of ——: WHEREAS by my said will I have appointed C. D. to be one of the trustees and executors thereof [and also one of the guardians of my infant children after the decease of my wife]: AND WHEREAS the said C. D. has lately died: Now I hereby appoint E. F., of, &c., to be one of the trustees and executors of my said will [and also to be one of the guardians of my infant children after the decease of my said wife], in the place of the said C. D., deceased: AND I GIVE to the said E. F. a legacy of £—— for his trouble in acting as an executor and trustee of my said will; and I declare that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout instead of the name of the said C. D., AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

No. XXVIII.

CODICIL REVOKING APPOINTMENT OF TRUSTEE AND APPOINTING NEW ONE.

CODICIL *revoking the Appointment of* ONE *of the* TRUSTEES *and* EXECUTORS, *and appointing a* NEW ONE *in his place.*

THIS IS A CODICIL, &c. (*see suprà*): WHEREAS by my said will I have appointed C. D. to be one of the trustees and executors thereof [and also one of the guardians of my infant children after the decease of my wife], and I have given him a legacy of £—— for his trouble in acting as such trustee and executor: NOW I HEREBY REVOKE the appointment of the said C. D. as such trustee and executor [and guardian], and also the said legacy of £—— given to him as aforesaid, AND I APPOINT E. F., of, &c., to be a trustee and executor of my said will [and also to be a guardian of my infant children after the decease of my said wife], in the place of the said C. D., and I give to the said E. F. a legacy

CODICIL REVOKING APPOINTMENT OF TRUSTEE AND APPOINTING NEW ONE.

of £—— for his trouble in acting as such trustee and executor: AND I DECLARE that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout instead of the name of the said C. D.: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

No. XXIX.

CODICIL *appointing an* ADDITIONAL TRUSTEE *and* EXECUTOR.

CODICIL APPOINTING ADDITIONAL TRUSTEE.

THIS IS A CODICIL, &c. (*see suprà*): WHEREAS by my said will I have appointed C. D., of, &c., and E. F., of, &c., to be the trustees and executors of my said will [and also to be the guardians of my infant children after the decease of my wife]: NOW I HEREBY APPOINT G. H., of, &c., to be an additional trustee and executor of my said will [and to be an additional guardian of my infant children after the decease of my said wife], and I declare that my said will shall be read and construed as if the names of the said C. D., E. F., and G. H., were inserted therein instead of the names of the said C. D. and E. F., and that all the trusts and powers in and by my said will reposed in and made exercisable by the said C. D. and E. F., shall be exercisable by the said C. D., E. F., and G. H.: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

No. XXX.

CODICIL *directing that a* SUM *paid to one of the Testator's* CHILDREN *in his life shall be taken in part* SATISFACTION *of his* SHARE *under Will.*

CODICIL, WITH DIRECTION AS TO MONEY ADVANCED TO SON.

Recital of will.

THIS IS A CODICIL, &c. (*see suprà*): WHEREAS by my said will I have directed that the residue of the moneys to arise from the sale and conversion of my real and personal estate shall be divided equally between my children who being sons attain the age of twenty-one years, or being daughters attain

CODICIL, WITH DIRECTION AS TO MONEY ADVANCED TO SON.

That testator has paid money for son.

Declaration that money so paid shall be taken in part satisfaction of son's share.

that age or marry: AND WHEREAS since the making of my said will I have paid the sum of £—— to or for the benefit of my son G. B.: Now I HEREBY DECLARE that the said sum of £——, so as aforesaid paid to or for the benefit of my said son G. B., shall be taken by him in part satisfaction of his share under my said will, and accordingly that the residue of the moneys to arise from the sale of my real and personal estate, shall be divided between the children among whom the same is directed to be divided by my said will, in such manner that the share of the said G. B. shall be less in amount than the shares of the other children by the sum of £——: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

No. XXXI.

CODICIL GIVING POWER TO TRUSTEES TO PURCHASE GOVERNMENT ANNUITIES.

CODICIL *giving a* POWER *to* TRUSTEES *to purchase* GOVERNMENT ANNUITIES, *or to* INVEST FUNDS *to meet* ANNUITIES *bequeathed by Will, and thereupon* DISCHARGING *property which by the Will was charged with the same.*

Recital of will giving estate to C. D. charged with said annuities.

Declaration that if devisee purchases a government annuity of like amount or sets apart funds to meet any annuity, then annuitants shall accept same and discharge estate.

THIS IS A CODICIL, &c.: WHEREAS I have by my said will bequeathed the following annuities, namely —— (*state particulars of annuities*), and have charged the same on my freehold estates in ——, which estates so charged as aforesaid are by my said will devised and bequeathed (with the residue of my real and personal estate) to C. D. absolutely: Now I HEREBY DECLARE, with respect to each and every of the said several annuities bequeathed by my said will, that if the said C. D., his heirs, executors, administrators, or assigns, shall at any time during the life of the annuitant to whom each or any of the said annuities is bequeathed as aforesaid, purchase in his name, or in the name or names of his nominee or nominees, a government annuity for the life of such annuitant equal in amount to the annuity bequeathed to him as aforesaid, and so that the first half-yearly payment of the said government annuity shall become due on a day not being later than the day on which the next half-yearly payment of the annuity for which the same shall be substituted would have

CODICIL GIVING POWER TO TRUSTEES TO PURCHASE GOVERNMENT ANNUITIES.

become due if such purchase had not been made, or if the said C. D., his heirs, executors, administrators, or assigns, shall at any time during the life of each or any such annuitant as aforesaid, transfer or cause to be transferred into the names of the trustees for the time being of my said will, stocks, funds, shares, or securities of the nature authorised as investments by my said will, of such an amount or value that the annual interest, dividends, or income thereof shall at the time of such investments be sufficient to pay the annuity bequeathed to such annuitant as aforesaid, to the intent that the said trustees shall stand possessed of the said stocks, funds, shares, and securities, Upon trust out of the interest, dividends, and income thereof, or if the same shall be insufficient, then out of the corpus thereof to pay the same annuity at the times at which the same is made payable by my said will, then, and in every or any such case as aforesaid, the annuitant for whom any such government annuity shall be purchased, or whose annuity shall be so secured as aforesaid (as the case may be), shall accept such government annuity, or the annuity to be so secured as aforesaid (as the case may be), in lieu and satisfaction of the annuity charged on the said premises in —— as aforesaid, and the said premises shall thenceforth be absolutely freed and discharged from the same annuity and from all claims and demands in respect thereof: And I further declare that in case and so often as any government annuity shall be purchased as aforesaid, the annuitant for whom the same shall be so purchased shall for the greater satisfaction of the said C. D., his heirs, executors, administrators, or assigns, execute such deed or deeds (if any) as he or they may require for evidencing the release of the said premises from the same annuity, such deed to be prepared and executed at the expense of the party requiring the same: And I also declare that if any or either of the said annuities shall be secured by the transfer of stocks, funds, shares, or securities, into the names or name of the trustees of my said will as aforesaid, a statement in writing signed by the trustees that stocks, funds, shares, or securities of the required amount or value have been transferred into their names upon the trust aforesaid shall be sufficient and conclusive evidence of the fact so stated: And in all other respects I confirm my said will.

Annuitant shall if requested execute release.

Statement of trustees to be conclusive evidence that funds have been set apart to meet annuity.

In witness, &c.

DISCLAIMERS.

No. I.

BY ONE OF SEVERAL TRUSTEES AND EXECUTORS OF A WILL.

DISCLAIMER *of the Trusts and Executorship of a* WILL *by* ONE *of several* TRUSTEES *and* EXECUTORS (*a*).

Recite will and appointment of executors.

TO ALL TO WHOM these presents shall come, A. B., of, &c. (*disclaiming party*), sends greeting: WHEREAS G. H., late of, &c., Esq., deceased, duly made his will, dated the —— day of ——, and thereby gave, devised, and bequeathed all his real and personal estate unto the said A. B. and C. D., of, &c., upon the trusts and with and subject to the powers and provisions therein declared and contained concerning the same respectively, and the said testator appointed the said A. B. and C. D. executors of his said will [and guardians of his infant children]: AND WHEREAS the said testator died on the —— day of ——: NOW THESE PRESENTS WITNESS that he the said A. B. doth hereby declare that he has from the time of the decease of the said G. H. refused to act as a trustee or executor of the said will [or as guardian of the infant children of the said testator], and he renounces and disclaims the said offices of trustee and executor [or trustee, executor and guardian], and all interest in and power over the real and personal estate devised and bequeathed by the said will (*b*).

Death of testator, that trustee has never acted.

Disclaimer by trustee of trusts and executorship of will.

IN WITNESS, &c.

(*a*) Under 33 & 34 Vict. c. 97, a disclaimer deed not being expressly mentioned in the schedule thereto, is liable to a 10*s*. stamp duty.

(*b*) The trustee should simply disclaim, and not profess to convey the property limited to him in trust. See Nicolson *v.* Wordsworth, 2 Swanst. 365.

No. II.

DISCLAIMER *by* EXECUTOR *and* TRUSTEE (*short form*).

BY EXECUTOR AND TRUSTEE

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*disclaiming party*), hereby disclaim and renounce the offices of executor and trustee of the will of G. H., late of, &c. (who died on the —— day of ——, 18—), and all estates and powers thereby expressed to be given to or vested in me.

IN WITNESS, &c.

No. III.

DISCLAIMER *of the Trusts of a* SETTLEMENT.

OF THE TRUSTS OF A SETTLEMENT.

TO ALL TO WHOM these presents shall come, A. B., of, &c. (*the disclaiming party*), sends greeting: WHEREAS by an indenture, dated the —— day of ——, and expressed to be made between (*parties*), in consideration of a marriage then intended and since solemnised between the said C. D. and E. F., certain messuages and hereditaments therein described were expressed to be granted or otherwise assured by the said C. D. unto and to the use of the said A. B. and G. H., of, &c., their heirs and assigns for ever, upon the trusts therein declared concerning the same: AND WHEREAS the said A. B. hath not executed the said indenture, nor accepted the estate thereby expressed to be conveyed to him, nor in any manner acted as a trustee thereof: NOW THESE PRESENTS WITNESS that the said A. B. hereby disclaims and renounces the office of trustee of the said indenture, and all estate and interest in the hereditaments thereby granted or otherwise assured, or expressed so to be.

Recite settlement appointing disclaiming trustee one of the trustees.

Disclaimer by trustee.

IN WITNESS, &c.

No. IV.

OF THE TRUSTS OF A SETTLEMENT.

DISCLAIMER *of the Trusts of a* SETTLEMENT *(to be written at the foot of the Settlement,—a short form).*

Disclaimer by trustee.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (who am named as a party to and trustee of the above written indenture), hereby DECLARE that I have not accepted the trusteeship nor acted in any manner as a trustee thereof; AND I DISCLAIM the said trusteeship and all estates, interests and powers by the said indenture expressed to be vested in me.

IN WITNESS, &c.

APPOINTMENTS OF NEW TRUSTEES.

Provisions of the new Act with a view to facilitate the vesting of trust property on an appointment of new trustees.

THE Conveyancing and Law of Property Act, 1881, contains important provisions relating to the appointment of new trustees, which are set out in the Dissertation on Trustees (*a*). The Act also provides in section 34 as follows :—

(1.) When a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a

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(*a*) *Suprà*, p. 158.

company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

When power is vested in tenant for life, concurrence of continuing trustees may be dispensed with.

The above section dispenses with the necessity of requiring the concurrence of the surviving or continuing trustees, or the representative of a last surviving or continuing trustee where the power is vested in some one else, *e.g.*, the beneficiary for life, inasmuch as the latter can by a simple declaration divest the trust property out of the persons in whom it may be vested at the time of the appointment for the purpose of vesting it in the persons who will be the trustees after the appointment (*b*).

No. I.

OF SETTLEMENT IN THE PLACE OF DECEASED AND RETIRING TRUSTEES.

APPOINTMENT *of* TWO NEW TRUSTEES *of a* SETTLEMENT *of* PERSONALTY *in the place of a* DECEASED TRUSTEE *and of a* RETIRING TRUSTEE *respectively; where the* TRUST FUNDS *consist of* STOCK *and* MONEY INVESTED ON MORTGAGE *of real Estate and* RAILWAY STOCK.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. his wife (*settlor and wife*), of the first part,

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Stamps on deeds to appoint new trustees.

(*b*) By the Stamp Act now in force, 33 & 34 Vict. c. 97, an appointment of a new trustee is made liable to a stamp duty of 10*s*. And sect. 78 provides that every instrument and every decree or order of any court or of any commissioners whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is chargeable with duty as a conveyance or transfer of property, subject to a proviso that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than 10*s*. It has been held that if an instrument contains an appointment of a new trustee and also a conveyance of the trust property, it requires two stamps of 10*s*. each. Hadgett *v*. Inl. Revenue Commissioners, 3 Ex. D. 46.

OF SETTLEMENT IN THE PLACE OF DECEASED AND RETIRING TRUSTEES.

Recite settlement of Consols.

G. H., of, &c. (*retiring trustee*), of the second part, and L. M., of, &c., and N. O., of, &c. (*new trustees*), of the third part: WHEREAS (*a*) by an indenture dated, &c., and made between the said A. B., of the first part, the said C. B. (then C. D., spinster), of the second part, E. F., and the said G. H. and I. K., of the third part (being a settlement made on the marriage between the said A. B. and C. D.), it was agreed and declared that the said E. F., G. H., and I. K., should stand possessed of the trust funds therein mentioned, upon the trusts, and with and subject to the powers and provisions therein declared and contained concerning the same: AND by the said indenture it was declared that the power of appointing new trustees conferred by statute should for the purposes of the said indenture be vested in the said A. B. and C. D. during their joint lives: [*If the power is not given by reference to the statute it should be recited at length*]. AND WHEREAS the said I. K. died on the —— day of ——: AND WHEREAS the said G. H. is desirous of being discharged from the trusts of the said indenture of settlement as he doth hereby declare: AND WHEREAS the trust funds now consist of the sum of £—— Consolidated £3 per Cent. Annuities, the sum of £—— invested on mortgage of hereditaments situate at ——, and which mortgage was effected by an indenture dated, &c. (*date and parties*), and the sum of £—— preference stock of the —— Railway Company: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. his wife, in exercise of the power for this purpose conferred by the Conveyancing and Law of Property Act, 1881, [*or, if the power is given by the settlement without reference to the statute*, in exercise of the power for this purpose contained in the said indenture of settlement], and of all other powers (if any) them hereunto enabling, hereby appoint the said L. M. and N. O. to be trustees of the said indenture of settlement in the place of the said I. K. deceased, and G. H. respectively, and direct that the said trust funds shall be forthwith transferred (*b*) so as to vest in the said E. F., L. M., and N. O., jointly, to be

Death of one trustee, and that another desires to be discharged.

State of trust funds.

Appointment of new trustees, and direction that trust funds shall be transferred accordingly.

(*a*) Instead of reciting the settlement, the deed might be described as "THIS INDENTURE, made, &c. (*as above*), being supplemental to an indenture dated, &c., and made, &c., being a settlement made on the marriage, &c.," but the saving of length by adopting this course would be very trifling.

(*b*) It will be observed that in this case, the trust funds, being stock in the funds, railway stock, and a mortgage, must be separately transferred. For the proper form of a transfer of mortgage on a change of one of several trustees, see Vol. I., "Mortgages."

OF SETTLEMENT IN THE PLACE OF DECEASED AND RETIRING TRUSTEES.

held by them, UPON the trusts, and with and subject to the powers and provisions now affecting the same under the said indenture of settlement: And the said L. M. and N. O. hereby consent to be trustees of the said indenture accordingly.

IN WITNESS, &c.

No. II.

OF SETTLEMENT BY INDORSEMENT OR SUPPLEMENT.

APPOINTMENT *of* NEW TRUSTEES *of a* SETTLEMENT, *in the place of* DECEASED *and* RETIRING TRUSTEES (*by deed* INDORSED *on, or* WRITTEN AT THE END *of* (*c*), *the* SETTLEMENT).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN the within [*or* above (*d*)] named A. B. and C. D., now C. B., the wife of the said A. B. (*settlor and wife*), of the first part, the within [*or* above] named G. H. (*retiring trustee*) of the second part, and L. M., of, &c., and N. O., of, &c. (*new trustees*), of the third part: WHEREAS the within [*or* above] named I. K. died on the —— day of ——, 18—: AND WHEREAS the said E. F. is desirous of being discharged from the trusts of the within [*or* above] written indenture of settlement, as he doth hereby declare: (*Recite state of trust funds, suprà,* p. 533 :) NOW THIS INDENTURE WITNESSETH, that, &c. (*Appointment of new trustees, and direction for transfer of trust funds* (*a*), *suprà*, p. 534.)

Recital of death of one trustee, and desire of another to be discharged.

Appointment, &c.

IN WITNESS, &c.

Observations on the practice (1) of writing a supplemental deed at the end of the principal one, and (2) of fastening two deeds together.

(*c*) If a settlement is engrossed bookwise, it is convenient to leave one or more blank pages at the end, for supplementary instruments, *e.g.*, appointments of new trustees. As each page so left is half of a skin of parchment, the other half of which is occupied by part of the principal deed, the two documents are as inseparable as if one were indorsed on the other. It may be as well to refer to a not uncommon practice of fastening together two deeds engrossed on separate parchments, the later one in date being drawn with the same omission of recitals as if it were indorsed. The device is a clumsy one, and open to the objection that deeds annexed in this way may be as easily disannexed. If the principal deed leaves no room for an indorsement or for writing the supplemental deed at the end of it, it is better to make the latter a separate instrument, reciting or referring to the former as concisely as possible.

(*d*) The word "above," is used instead of "within," where the supplemental deed is written at the end of the principal one.

(*a*) It is supposed that the trust funds are invested as in Precedent No. I.

No. III.

APPOINTMENT *of a* NEW TRUSTEE *of the same* SETTLEMENT, *in the place of one of the* TRUSTEES *appointed by the* LAST PRECEDENT (*by another deed* INDORSED *or written at the* END *of the* SETTLEMENT).

OF SETTLEMENT, BY INDORSED OR SUPPLEMENTAL DEED.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN the within [*or* above (*b*)] named A. B. and C. D., now C. B. (*settlor and wife*), of the one part, and P. Q., of, &c. (*new trustee*), of the other part: WHEREAS the above-named N. O. died on the —— day of ——, 18—: AND WHEREAS the trust funds subject to the within [*or* firstly above] written indenture of settlement still consist of the particulars mentioned in the above [*or* secondly above] written indenture dated the —— day of ——, namely (*state particulars*): NOW THIS INDENTURE WITNESSETH that, &c., (*Appointment of new trustee, and direction for transfer of trust funds, suprà*, p. 534, *mutatis mutandis*.)

Recite death of trustee. State of trust funds. Appointment of new trustee.

IN WITNESS, &c.

No. IV.

APPOINTMENT *of* NEW TRUSTEES *of a* SETTLEMENT *including* PERSONALTY *in* POSSESSION *and* REVERSION (*c*).

OF SETTLEMENT OF PERSONALTY IN POSSESSION AND REVERSION.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c., and C., his wife, formerly C. D. (*settlor and wife*), of the first part, and L. M., of, &c. (*new trustee*), of the other part: WHEREAS by an indenture dated, &c., and made, &c. (being the settlement made on the marriage of the said A. B. and C. D.), the said C. D. assigned the one third part or share to which she was entitled in reversion expectant on the decease of —— and ——, her father and mother, of and in the trust moneys, stocks, funds, and

Recite settlement, of reversionary share in trust funds,

(*b*) The words in brackets are to be used when the deed is written at the end of the settlement.

(*c*) If the appointment is made by indorsement or by deed written at the end of the principal deed, the parties of the first two parts will be described as within or above named, and the recital of the settlement will be omitted. See Precedents Nos. II. and III.

OF SETTLEMENT OF PERSONALTY IN POSSESSION AND REVERSION.

also trust funds in possession,

securities therein in that behalf mentioned or referred to unto the said E. F., G. H., and I. K.: AND by the said indenture it was declared that the said E. F., G. H., and I. K., should stand possessed of the moneys, stocks, funds, and securities mentioned in the schedule thereto (and to which the said C. B. was beneficially entitled in possession as therein appears), and also of the said reversionary part or share and premises thereby assigned as aforesaid, UPON the trusts, and with and subject to the powers and provisions therein declared concerning the same; AND by the said indenture the said A. B. assigned a policy of assurance on his life for the sum of £——, effected with the —— Assurance Society, dated, &c., and numbered, &c., and the sum of £—— thereby assured, and all other moneys to become payable thereunder unto the said E. F., G. H., and I. K., upon the trusts, and with and subject to the powers and provisions therein declared and contained of and concerning the same; AND by the said indenture it was declared that the power of appointing new trustees conferred by statute should for the purposes thereof be vested in the said A. B. and C. his wife during their joint lives: AND WHEREAS the said I. K. died on the —— day of ——, 18—: AND WHEREAS some of the investments mentioned in the schedule to the said indenture of settlement have been changed, and the trust funds comprised in the said schedule are now represented by the particulars mentioned in the schedule to these presents: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. his wife, in exercise of the power for this purpose conferred by the Conveyancing and Law of Property Act, 1881, [*or*, contained in the said indenture of settlement,] and of all other powers (if any) them hereunto enabling, hereby appoint the said L. M. to be a trustee of the said indenture of settlement in the place of the said I. K. deceased, and jointly with the said E. F. and G. H.: AND they direct and declare that the trust funds mentioned in the schedule hereto shall be forthwith duly transferred so as to vest in the said E. F., G. H., and L. M. jointly, and that the right to recover and receive the part or share, policy moneys, and premises by the said indenture of settlement expressed to be assigned unto the said E. F., G. H., and I. K., shall forthwith without any assignment vest in the said E. F., G. H., and L. M. as joint tenants, Upon the trusts, and with and subject to the powers and provisions affecting the said premises respectively under the said

and policy of assurance.

Death of trustee.

Present state of trust funds in possession.

Witnessing part.

Appointment of new trustee.

Direction for transfer of property in possession and for vesting of reversionary property in continuing and new trustees.

OF SETTLEMENT OF PERSONALTY IN POSSESSION AND REVERSION.

indenture of settlement: And the said L. M. hereby consents to be a trustee of the said indenture accordingly.

In witness, &c.

The Schedule above referred to.

No. V.

APPOINTMENT *of a* New Trustee *of a deed of* Conveyance *of* Land *in trust for sale accompanying a settlement* (*by* Deed Indorsed *or written at the* End *of the* Settlement).

OF CONVEYANCE IN TRUST FOR SALE.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between the within [*or* above] named A. B. and C. D., now C. B. (*settlor* and *wife*), of the one part, and L. M., of, &c. (*new trustee*), of the other part: Witnesseth that in consequence of the death of the within [*or* above] named I. K. (which event happened on the —— day of ——, 18—) the said A. B. and C. his wife, in exercise, &c., hereby appoint the said L. M. to be a trustee of the within [*or* above] written indenture in the place of the said I. K. deceased and jointly with the said E. F. and G. H., for all the purposes for which the said E. F., G. H., and I. K. were appointed trustees by the said indenture, and also for the purposes of the Settled Land Act, 1882: And the said A. B. and C. his wife hereby declare that the lands and hereditaments comprised in the said indenture shall forthwith and without any conveyance vest in the said E. F., G. H., and L. M. as joint tenants in fee simple, upon the trusts affecting the same under the said indenture: And the said L. M. hereby consents to be a trustee of the said indenture accordingly.

Appointment of new trustee and declaration that land will vest in continuing trustees and new trustee jointly.

In witness, &c.

No. VI.

APPOINTMENT *of* New Trustee *of a* Settlement *of the* Proceeds *of* Lands *conveyed to* Trustees *upon trust for sale* (*by* Deed Indorsed *or written at the* End *of the* Settlement).

OF SETTLEMENT OF PROCEEDS OF LAND.

Parties.

THIS INDENTURE, &c. (*same parties as last Precedent*): Whereas the within [*or* above] named I. K. died on the ——

Recital of

OF SETTLEMENT OF PROCEEDS OF LAND.

death of trustee.

Appointment of new trustee of deed of conveyance.

Appointment of same person to be new trustee of settlement.

day of ——: And whereas by an indenture bearing even date with and made with the same parties as these presents, the said L. M. has been appointed to be a trustee of the indenture of conveyance recited in and bearing even date with the within [*or* above] written indenture of settlement, in the place of the said I. K. deceased: NOW THIS INDENTURE WITNESSETH, that, &c. (*Appointment of L. M. to be new trustee in place of I. K., as in first part of last Precedent, omitting the reference to the Settled Land Act*, 1882).

In witness, &c.

No. VII.

OF A STRICT SETTLEMENT IN THE PLACE OF RETIRING TRUSTEE.

APPOINTMENT *of a* NEW TRUSTEE *of a* STRICT SETTLEMENT *of* FREEHOLD PROPERTY (*by separate deed*) (*a*).

Parties.

Recite settlement.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c., (*appointor*), of the first part, E. F., of, &c. (*retiring trustee*), of the second part, and L. M., of, &c. (*new trustee*), of the third part: Whereas, by an indenture of release, dated the —— day of ——, grounded on a lease for a year, and made between, &c. (*parties*) (being a settlement made in contemplation of the marriage between the said A. B. and C. his wife), certain messuages, farms, lands, and hereditaments, situate in, &c., in the said indenture of release more particularly described (being of freehold tenure), were conveyed to the uses upon the trusts and with and subject to the powers and provisions by and in the said indenture limited declared and contained of and concerning the same, and in part hereinafter mentioned (that is to say), from and after the solemnisation of the said then intended marriage, To the use of the said A. B. during his life, without impeachment of waste; [and from and after the determination of that estate by any means in his lifetime, To the use of the said E. F. and G. H., and their heirs during the life of the said A. B., upon trust to preserve contingent remainders], with divers remainders over: And by

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(*a*) If the appointment is by indorsement or supplemental deed written after the settlement like Precedents Nos. II. and III., the parties of the first three parts will be described as within or above named, their other descriptions being omitted, and the recital of the settlement will be omitted, and the first time that the settlement is mentioned, it will be called the within or above written indenture of settlement; in all other respects the deed will be the same.

OF A STRICT SETTLEMENT IN THE PLACE OF RETIRING TRUSTEE.

Sale of part of freeholds under a power, and purchase of other hereditaments.

Desire of one of trustees to be discharged.

Witnessing part.

Appointment of new trustee.

Declaration that estate of trustees in settled lands shall vest in continuing and new trustees jointly.

To hold to use of old and new trustees.

the said indenture, &c. (*Recite power to appoint new trustees*): And whereas, under and by virtue of a power of sale contained in the said indenture of settlement parts of the freehold hereditaments thereby settled have been sold, and the moneys produced by such sale have been laid out in the purchase of other hereditaments which have been conveyed to the uses of the said indenture of settlement by an indenture dated the —— day of ——, and made between (*parties*): And whereas the said E. F. is desirous of being discharged from the trusts of the said indenture of settlement. NOW THIS INDENTURE WITNESSETH, that the said A. B., in exercise of the power for this purpose contained in the said indenture of settlement, [*or* conferred by the Conveyancing and Law of Property Act, 1881,] and of all other powers (if any), him hereunto enabling, hereby appoints the said L. M. to be a trustee of the said indenture of settlement in the place of the said E. F., and jointly with the said G. H. for all the purposes for which the said E. F. and G. H. were appointed trustees by the said indenture, and also for the purposes of the Settled Land Act, 1882: And the said A. B. hereby declares that all the estate and interest of the said E. F. and G. H. in such of the messuages, lands, and hereditaments comprised in the said indenture of settlement, as remain unsold, and in the lands and hereditaments comprised in the said indenture of the —— day of —— respectively shall forthwith and without any conveyance vest in the said G. H. and L. M., as joint tenants upon the trusts affecting the same under the said indenture of settlement (*b*).

In witness, &c.

No. VIII.

APPOINTMENT *of* New Trustees *of a* Settlement *of* Real Estate *including* Freeholds, Copyholds, *and* Leaseholds, *and* Money *liable to be laid out in the* Purchase *of* Land (*by deed indorsed on or written at the end of the Settlement*) (*c*).

OF SETTLEMENT OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS, AND MONEY REPRESENTING LAND.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Be-

(*b*) If by the original settlement no estate is created to preserve contingent remainders, and the trustees take no other estate or interest in the freeholds, this declaration will be omitted.

(*c*) It is supposed in this Precedent that a term of 1000 years is vested in the trustees and no other legal estate in the freeholds.

OF SETTLEMENT OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS, AND MONEY REPRESENTING LAND.

Appointment of new trustees.

TWEEN the within [*or* above] named A. B. (*appointor*) of the one part, and C. D., of, &c., and E. F., of, &c. (*new trustees*) of the other part, WITNESSETH that in consequence of the death of the within [*or* above] named G. H. and I. K. (which events happened on the —— day of ——, 18—, and the —— day of —— respectively) the said A. B., in exercise of the power for this purpose conferred by the Conveyancing and Law of Property Act, 1881, [*or* contained in the within [*or* above] written indenture,] and of all other powers (if any) him hereunto enabling, hereby appoints the said C. D. and E. F. to be trustees of the said indenture in the place of the said G. H. and I. K. respectively and jointly with the within [*or* above] named L. M., for all the purposes for which the said G. H., I. K., and L. M. were appointed trustees by the said indenture, and also for the purposes of the Settled Land Act, 1882: AND the said A. B. hereby declares that all the freehold lands and hereditaments comprised in the within [*or* above] written indenture, and thereby limited to the use of the said G. H., I. K., and L. M. for and during the term of one thousand years computed from the decease of the said A. B., except such of them as have been sold or disposed of since the date of the said indenture, and also all the freehold lands and hereditaments which by virtue of any conveyance or exchange, or by any other means whatsoever, have become and now are subject to the uses of the within [*or* above] written indenture, and also all the leasehold lands and hereditaments comprised in the said indenture shall forthwith and without any assignment vest in the said C. D., E. F., and L. M. as joint tenants as to the said freehold lands and hereditaments for all the unexpired residue of the said term of one thousand years, and as to the said leasehold lands and hereditaments for the unexpired residue of the several terms of years subsisting therein under the leases mentioned in the said indenture, and as to all the said premises upon the trusts affecting the same respectively under the said indenture: AND the said A. B. hereby directs that the said L. M. as such surviving trustee as aforesaid shall at the cost of the trust estate make such surrender or surrenders of the copyhold lands and hereditaments now subject to the trusts of the said indenture, and such transfers of the stocks, funds, and securities mentioned in the schedule hereto, which stocks, funds, and securities represent the proceeds of sale of parts of the settled hereditaments from

Declaration that freehold settled land shall vest in surviving and new trustees jointly.

Direction that copyhold lands and investments representing money arising from sales shall be surrendered and transferred to surviving and new trustees.

time to time sold under the power in that behalf contained in the said indenture, as will vest the same respectively in the said C. D., E. F., and L. M. as joint tenants upon the trusts now affecting the said copyhold premises, stocks, funds, and securities respectively under the said indenture: AND the said C. D., E. F. and L. M. hereby consent to be trustees of the said indenture accordingly.

OF SETTLEMENT OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS, AND MONEY REPRESENTING LAND.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

1. THE sum of £—— Consolidated £3 per Cent. Annuities standing in the names of —— in the books of the Governor and Corporation of the Bank of England.

2. THE sum of £—— invested on mortgage of real estate situate at, &c.

No. IX.

APPOINTMENT *by* TENANT FOR LIFE *of* NEW TRUSTEE *of a* TERM OF YEARS (*a*) *created by a* SETTLEMENT *of* REAL ESTATE, *by deed* INDORSED *or* WRITTEN *at the* FOOT *of the* SETTLEMENT.

OF NEW TRUSTEE OF TERM.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN the within [*or* above] named A. B. (*appointor*) of the one part, and C. D., of, &c. (*new trustee*) of the other part, WITNESSETH that in consequence of the death of the within named G. H. (which event happened on the —— day of ——, 18—), the said A. B., in exercise of the power for this purpose, &c. (*as in last precedent*), hereby appoints the said C. D. to be a trustee of the term of —— years created by the said indenture of settlement in the place of the said G. H. deceased, and jointly with the within named E. F., and declares that all the lands and hereditaments comprised in and subject to the uses of the said indenture, shall forthwith and without any assignment vest in the said C. D. and E. F. as joint tenants for the residue of the said term of —— years upon the trusts now

Appointment of new trustee of term, and declaration that term shall vest in surviving and new trustee.

(*a*) It is supposed in this case, that by the settlement different trustees are appointed for the term of years to those appointed for general purposes.

OF NEW TRUSTEE OF TERM.

affecting the same under the said indenture: And the said C. D. hereby consents to be a trustee of the said indenture accordingly.

In witness, &c.

No. X.

OF ONE TRUSTEE IN PLACE OF TWO.

APPOINTMENT *by a* Surviving Trustee *of one* New Trustee *of* Freeholds *held upon a trust for sale in the place of two deceased trustees* (*by indorsement*).

THIS INDENTURE, made the —— day of ——, 18—, Between the within named A. B. (*surviving trustee*) of the one part, and C. D., of, &c. (*new trustee*) of the other part, WITNESSETH that in consequence of the deaths of the within named E. F. and G. H., which events happened on the —— day of ——, 18—, and the —— day of ——, 18—, respectively, the said A. B., in exercise of the power for this purpose conferred by the Conveyancing and Law of Property Act, 1881, and of all other powers (if any), him hereunto enabling, hereby appoints the said C. D. to be a trustee of the within written indenture in the place of the said E. F. and G. H. deceased, and jointly with him the said A. B. for all the purposes for which the said A. B., E. F., and G. H. were appointed trustees by the said indenture, and also for the purposes of the Settled Land Act, 1882: And the said C. D. hereby consents to be a trustee of the said indenture accordingly: AND THIS INDENTURE ALSO WITNESSETH, that in consequence of the foregoing appointment, and to give full effect thereto, the said A. B. as trustee hereby conveys (*a*) unto the said A. B., C. D., and E. F., all the lands, tenements, and hereditaments comprised in the within written indenture: To hold the same unto and to the use of the said A. B., C. D., and E. F., as joint tenants in fee simple, Upon the trusts affecting the same under the said indenture.

In witness, &c.

(*a*) In this case the surviving trustee, being the appointor, may as well convey the legal estate, as make a vesting declaration under s. 34 of the Act.

No. XI.

APPOINTMENT *of* NEW TRUSTEES *of a* WILL, *a* SEPARATE TRUSTEE *being* APPOINTED *for each of* TWO DISTINCT FUNDS (*a*).

OF SEPARATE TRUSTEES FOR DISTINCT FUNDS.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*surviving trustee of will*), of the first part, C. D., of, &c. (*new trustee of one fund*), of the second part, and E. F., of, &c. (*new trustee of the other fund*), of the third part.

Recitals.

(*Recite will, giving two legacies of £5000 each upon trusts for two daughters, L. H. and M. H., and their children respectively, and state what investments represent each legacy, and death of one trustee X. Y., leaving A. B. the surviving trustee*). NOW THIS INDENTURE WITNESSETH, that the said A. B., in exercise of the power for this purpose conferred by the Conveyancing Acts, 1881, 1882, and of all other powers (if any) him hereunto enabling, hereby appoints the said C. D. to be a trustee of the said will in the place of the said X. Y. deceased, and jointly with him the said A. B., so far as regards the said trust legacy of £5000, by the said will directed to be held on trust for the said L. H. and her children as aforesaid, and the investments representing the same, and the said E. F. to be a trustee of the said will in the place of the said X. Y. deceased, and jointly with him the said A. B., so far as regards the said trust legacy of £5000 by the said will directed to be held in trust for the said M. H. and her children as aforesaid, and the investments representing the same: And the said C. D. and E. F. hereby respectively consent to be trustees of the said will accordingly (*b*).

Appointment of one trustee for one fund, and another trustee for the other fund.

IN WITNESS, &c.

(*a*) See Conveyancing Act, 1882, s. 5. Under this enactment new trustees might be appointed of one of two funds held upon distinct trusts, without making any appointment as regards the other fund.

(*b*) It is assumed that the investments will be transferred by separate instruments.

No. XII.

DISCHARGE OF TRUSTEE.

DEED *to* DISCHARGE *a* TRUSTEE *wishing to* RETIRE *from the trusts of a* SETTLEMENT *comprising* LAND *and* PERSONAL ESTATE (*by deed indorsed on or written after the Settlement*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN the within [*or* above] named A. B. and C. D. (*continuing trustees*) of the first part, the within [*or* above] named E. F. (*person empowered to appoint new trustees*) of the second part, and the within [*or* above] named G. H. (*retiring trustee*) of the third part, WITNESSETH, that the said G. H. hereby declares that he is desirous of being discharged from the trusts of the within [*or* above] written indenture of settlement: AND the said A. B. and C. D., and also the said E. F., hereby consent to the discharge of the said G. H. from the said trusts, and to the vesting in the said A. B. and C. D. alone of the trust property: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said G. H. as trustee hereby releases (*a*) unto the said A. B. and C. D., All the lands, tenements, and hereditaments comprised in the within [*or* above] written indenture: TO HOLD the same unto and to the use of the said A. B. and C. D. in fee simple, upon the trusts now affecting the same under the said indenture: And the said G. H. hereby covenants with the said A. B. and C. D., that he the said G. H. will forthwith duly transfer the stocks, funds, and securities mentioned in the schedule hereto, and which now represent the said stocks, funds, and securities settled by the within [*or* above] written indenture so as to vest the same in the said A. B. and C. D. alone, to be held by them upon the trusts affecting the same under the said indenture.

Discharge of trustee.

Retiring trustee releases lands to continuing trustees,

and agrees to transfer to them trust funds.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) See note to Precedent No. X.

No. XIII.

APPOINTMENT *under the* STATUTORY POWER *by* SURVIVING TRUSTEE *of a* NEW TRUSTEE *of a* WILL *of* REAL *and* PERSONAL *Estate—where the Estate has not been realized* (*a*).

OF WILL IN PLACE OF DECEASED TRUSTEE.

Parties.

Recital of will.

Appointment of new trustee.

Conveyance and assignment of residuary estate so as to vest in surviving and new trustees upon trusts of will.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*surviving trustee*), of the one part, and E. F., of, &c. (*new trustee*), of the other part: WHEREAS X. Y., late of, &c., deceased, duly made his will dated the —— day of ——, 18—, and thereby (after sundry devises and bequests) gave, devised, and bequeathed all his real and personal estate not thereby otherwise disposed of (hereinafter called "the testator's residuary estate") unto the said A. B. and C. D., of, &c., upon the trusts therein declared concerning the same: AND, &c. (*power to appoint new trustees, and appointment of A. B. and C. D. to be executors—death of testator, and probate of his will by both executors—death of C. D.*): AND WHEREAS the estate of the said testator has not been fully got in nor have all his debts been yet paid: NOW THIS INDENTURE WITNESSETH that the said A. B. in exercise of the power for this purpose, conferred by the Conveyancing and Law of Property Act, 1881, and of all other powers (if any) him hereunto enabling, hereby appoints the said E. F. to be a trustee of the said will in the place of the said C. D.: And the said E. F. hereby consents to be a trustee of the said will accordingly: AND THIS INDENTURE ALSO WITNESSETH that in consideration of the premises, the said A. B. as trustee hereby conveys and assigns unto the said A. B. and E. F., ALL the testator's residuary real and personal estate: TO HOLD the same as to such part thereof as consists of freehold hereditaments unto and to the use of the said A. B. and E. F., in fee simple, AND as to the remainder thereof unto the said A. B. and E. F. absolutely, NEVERTHELESS as to all the said premises, UPON the

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(*a*) Where the particulars of the property have been ascertained and the debts, &c., paid, the next Precedent should be used.

OF WILL IN PLACE OF DECEASED TRUSTEE.

Proviso that the rights and privileges of the surviving executor as such shall not be affected.

trusts and with and subject to the powers and provisions by and in the said will declared and contained of and concerning the same: PROVIDED ALWAYS, and it is hereby declared that these presents shall not operate as an assent by the said A. B. in his character of executor to the aforesaid residuary bequest nor prevent him from calling in the outstanding personal estate, or any part thereof, or applying the same in payment of debts or otherwise in a due course of administration, or from doing any other act or thing in his character of executor which he might have done if these presents had not been executed, but the position of all parties after the execution of these presents shall be the same in all respects as if the said E. F. had been named in the said will as a trustee (but not an executor) in the place of the said C. D., and these presents had not been executed.

IN WITNESS, &c.

No. XIV.

OF A WILL IN PLACE OF DISCLAIMING TRUSTEE.

APPOINTMENT *under the* STATUTORY POWER *of a* NEW TRUSTEE *of a* WILL *of* REAL *and* PERSONAL *Estate in the place of a* DISCLAIMING TRUSTEE *where the Estate has been realized.*

Parties.

Disclaimer of one of trustees.

That debts, &c., have been paid,

Particulars of estate.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*continuing trustee*), of the one part, and E. F., of, &c. (*new trustee*), of the other part (*Recite will as in last Precedent, death of testator and probate by A. B. alone*): AND WHEREAS the said C. D. has by a deed poll under his hand and seal, dated the —— day of ——, disclaimed the offices of trustee and executor under the said will, and all interest in the real and personal estate thereby devised and bequeathed: AND WHEREAS the funeral and testamentary expenses of the said testator and his debts (so far as they have been ascertained), and the legacies given by his will have been paid and satisfied: AND WHEREAS the real and residuary personal estate of the said testator now consists of or is represented by the particulars mentioned and set forth in the schedule hereto: NOW THIS INDENTURE WITNESSETH that, &c. (*appointment of new trustee, as in last Precedent, suprà*, p. 545). AND THIS INDENTURE ALSO WITNESSETH, that the said A. B. as trustee hereby conveys unto the said A. B. and E. F., ALL THE freehold hereditaments described in the first part of the schedule hereto, AND all other (if any) the freehold hereditaments of or to which the said X. Y. was seised or entitled at the time of his decease, and which are now vested in the said A. B. as the continuing trustee of the same will (*a*): TO HOLD the same unto and to the use of the said A. B. and E. F. in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that the said A. B. as trustee hereby assigns unto the said A. B. and E. F., 1st. ALL the leasehold hereditaments described in the second part of the schedule hereto, and all other (if any) the leasehold hereditaments of or to which the said testator X. Y. was possessed or entitled at the time of his decease, and which are now vested in the said A. B. as the continuing trustee of the same will: AND, secondly, all the furniture and other personal estate mentioned in the fourth part of the schedule hereto, and all other (if any) the personal estate of the said testator X. Y. now vested in the said A. B. as such continuing trustee as aforesaid (except the moneys, stocks, funds, and securities mentioned in the third part of the schedule hereto, which are intended to be transferred to the said A. B. and E. F. in the manner mentioned on that behalf in the said third part of the said schedule). TO HOLD the premises firstly hereinbefore assigned unto the said A. B. and E. F., for the several terms, estates, and interests now subsisting therein respectively: AND TO HOLD the premises secondly hereinbefore assigned unto the said A. B. and E. F. absolutely, AND it is hereby agreed and declared that the said A. B. and E. F., shall stand seised and possessed of all the said freehold and leasehold hereditaments and personal estate hereby conveyed and assigned respectively, and also the moneys, stocks, funds, and securities mentioned in the third part of the

Continuing trustee conveys freehold

to use of continuing and new trustees.

Continuing trustee assigns leaseholds and other personal estate

unto continuing and new trustees.

Declaration of trust.

(*a*) If the testator died before 1st January, 1882, and the will contained a devise of trust and mortgage estates to the trustees, add here "other than and except any hereditaments which were vested in the said X. Y. as a trustee or mortgagee."

OF A WILL IN PLACE OF DISCLAIMING TRUSTEE.

schedule hereto, and the rents, profits, and income thereof respectively, upon the trusts and with and subject to the powers and provisions by and in the said will declared and contained concerning the same respectively, or such of them as are now subsisting and capable of taking effect.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

The First Part.

A freehold farm and lands, called ——, situate in the parish of ——, containing —— or thereabouts, and in the occupation of ——.

The Second Part.

A leasehold farm and lands, called ——, situate in ——, held under a lease dated or for the term of —— years, computed from, &c.

The Third Part.

1. A sum of £——, Consolidated £3 per Cent. Annuities, standing in the name of the said testator.

2. A sum of £——, secured by a mortgage of real estate, situate at ——, which mortgage was made by an indenture dated, &c., and made, &c.

3. The sum of £—— debenture stock of the —— Railway Company, &c., &c.

It is intended that No. 1 shall be transferred into the names of the said A. B. and E. F., and that No. 2 and the security for the same shall be assigned unto the said A. B. and E. F. by an indenture already prepared and endorsed on the said indenture of mortgage, and that No. 3 shall be also forthwith transferred to them by a deed already prepared for that purpose.

The Fourth Part.

The furniture in and about, &c.

(*Other Particulars.*)

DISENTAILING ASSURANCES.

Powers of a tenant in tail in possession or remainder.

A tenant in tail in possession of freehold land may under the Fines and Recoveries Abolition Act (*a*) dispose of the fee simple or any less estate by a deed enrolled in the Chancery division of the High Court of Justice (*b*), but if the estate tail is preceded by an estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), created by the same settlement, the tenant in tail, unless he is also tenant in fee simple in remainder expectant on his own estate tail, cannot, without the consent of the person called by the Act "the protector of the settlement" (*c*), create any larger estate than a base fee, *i. e.*, an estate which will be a complete bar to the issue, but not to those in remainder or reversion, and during the continuance of such issue will either be subject to his disposition, or descend to his heirs as a fee simple.

Enlargement of base fee.

A tenant in tail who has created a base fee, may convert such base fee into a fee simple, by another enrolled deed, so soon as there ceases to be a protector of the settlement (*d*), or during the protectorship with the protector's consent. And if the owner of a base fee becomes entitled to the immediate reversion in fee simple, the estate is enlarged *ipso facto* (*e*).

General rule as to the person who shall be protector.

The general rule laid down by the Act as to protectors is, that where there is a tenant in tail under a settlement, and there is subsisting under the *same* settlement any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years)

(*a*) 3 & 4 Wm. 4, c. 74, s. 15.

(*b*) Sect. 41. A tenant in tail may exercise the powers of sale, leasing, &c., conferred by the Settled Land Act, 1882, without having the deed enrolled.

(*c*) Sect. 34.

(*d*) Sect. 19.

(*e*) Sect. 39.

prior to the estate tail, then the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or the person who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being for all the purposes of the Act deemed the prior estate), is the protector of the settlement, and is to be deemed the owner of such prior estate, although the prior estate may have been charged by the owner thereof, or by the settlor, or otherwise howsoever, and although the whole of the rents and profits be required for the payment of the charges thereon, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner, and that an estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement, is to be deemed a prior estate under the same settlement, and that an estate by way of resulting use or trust, to or for the settlor, is also to be deemed an estate under the same settlement (*f*).

Power to settlor to appoint a protector.

The settlor may appoint any person, or number of persons, not exceeding three, to be protector or protectors in lieu of the person who would have been the protector if there had been no such appointment (*g*).

Office of protector survives, and if all appointed protectors die, tenant for life is protector.

If two or three protectors are appointed, the office passes to the survivors and survivor (*h*); and if all the protectors die, and the settlement contains no power to perpetuate the protectorship, or there being such a power, it is not exercised, the tenant for life becomes protector (*i*).

Lunatic protector.

Where the protector is a lunatic, the Lord Chancellor, or other person for the time being intrusted with the care of lunatics, is the protector in the place of such lunatic (*j*).

Consent of protector, how given.

The consent of the protector must be given by the same assurance by which the disposition is effected, or

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(*f*) Sect. 22. The reader is referred to the fifteen following sections of the Act for further provisions respecting protectors.

(*g*) Sect. 32.

(*h*) Bell *v.* Holtby, L. R. 15 Eq. 178.

(*i*) Clarke *v.* Chamberlin, 16 Ch. D. 176.

(*j*) Sect. 33.

by another deed executed on or before the day on which the assurance is made (*k*). And the protector cannot revoke his consent (*l*). If the consent is given by a distinct deed, it must be enrolled at or before the time when the assurance of the tenant in tail is enrolled (*m*).

Disposition by married women, tenants in tail.

The Act provides that where the tenant in tail is a married woman, the concurrence of her husband shall be necessary, and the deed must be acknowledged by her (*n*); and in a recent case, Jessel, M.R., expressed an opinion (though it was unnecessary to decide the point) that such concurrence and acknowledgment are necessary, even when the wife is equitable tenant in tail for her separate use (*o*). Whether this view is correct or not, it is apprehended that under the Married Women's Property Act, 1882, which makes a married woman competent to dispose of real or personal property as if she were a feme sole, a woman who has married or acquired an estate tail since the 31st December, 1882, can bar the entail without her husband's concurrence and by an unacknowledged deed. The acknowledgment of a married woman may be taken subsequently to the enrolment of the deed, and after the expiration of the six months limited for enrolment (*p*). Where a married woman is protector she may consent to a disposition by the tenant in tail as if she were a feme sole (*q*).

Tenants in tail of lands held by copy of court roll.

The powers of disposition given to tenants in tail are applicable to copyholds, except that the disposition in the case of an estate at law is to be made by surrender, and, in the case of an equitable estate, by surrender, or deed entered on the court rolls of the manor, instead of being enrolled in the Chancery division. The protector's consent to a disposition of copyholds may be by deed, to be produced to the lord of the manor at or before the time when the disentailing surrender is made, and then entered on the court rolls, or it may be given to the person taking the surrender, in which case the fact of the consent must be mentioned in the memorandum of surrender (*r*).

(*k*) Sect. 42.

(*l*) Sect. 44.

(*m*) Sect. 46.

(*n*) Sect. 40.

(*o*) Cooper *v.* Macdonald, 7 Ch. D. 288.

(*p*) *Ex parte* Taverner, 1 Jur. N. S. 1194.

(*q*) Sect. 45.

(*r*) Sects. 51 to 54.

Disentailing deed of copyholds must be entered on court rolls within six months.

A deed to bar an equitable entail of copyholds must be entered on the court rolls within six months after its execution (*s*).

A voidable estate by a tenant in tail in favour of a purchaser confirmed by a subsequent disposition of such tenant in tail under the Act, but not against a purchaser without notice.

If a tenant in tail creates a voidable estate in favour of a purchaser for valuable consideration, and afterwards, under the Act, makes a disposition of the same lands, such disposition, whatever its object may be, has the effect of confirming the voidable estate to the extent to which the second deed is an effective disposition, except that if the second disposition is made to a *purchaser* for valuable consideration who has not *express notice* of the voidable estate, then the voidable estate is not confirmed as against such purchaser and the persons claiming under him (*t*).

Disposition of lands of bankrupt tenant in tail

Where a tenant in tail of lands becomes bankrupt, the trustee appointed in the bankruptcy is empowered to deal with the lands in the same manner as the bankrupt might have dealt with the same (*u*).

Money subject to be invested in the purchase of lands to be entailed, may be disentailed.

Lands to be sold, where the money arising from the sale thereof is subject to be invested in the purchase of land to be settled so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled so that any person, if the lands were purchased, would have an estate tail therein, may be disentailed, and they are, for this purpose, considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to, but where the property thus disentailed consists of leasehold lands for years, or of money, such leasehold lands or money are, as to the person in whose favour or for whose benefit the disentailing disposition is made, treated as personal estate (*v*).

Retrospective effect of enrolment.

Every deed required to be enrolled, operates (when enrolled) from the time of its execution, except as against any person claiming for valuable consideration under any subsequent deed duly enrolled before the enrolment of the first deed (*x*).

(*s*) Honywood *v.* Foster, 30 Beav. 1; Gibbons *v.* Snape, 32 *ib.* 130.

(*t*) Sect. 38.

(*u*) See 32 & 33 Vict. c. 71, s. 25; 3 & 4 Wm. 4, c. 74, ss. 56 to 73.

(*v*) Sect. 71.

(*x*) Sect. 74.

Possession adverse to a tenant in tail runs against all whom he could have barred.

When the right of a tenant in tail to recover land has been barred by the Statute of Limitations, all persons claiming any estate, interest, or right which such tenant in tail might lawfully have barred, are barred also, and when time has begun to run against a tenant in tail, *it* continues to run after his death against all persons whom he might have barred (*y*).

An assurance by a tenant in tail, which is ineffectual to bar the remainders, if followed by possession confers a good title against the remainderman at the end of twelve years from the time when the assurance, if then executed, would have barred them.

If a tenant in tail makes an assurance, which is not effectual to bar the remainders over, and the person claiming by virtue of such assurance enters into possession or receipt of the profits, the remaindermen are barred (under the new Act) (*z*) at the end of twelve years from the time at which such assurance, if it had then been executed by the tenant in tail, would, *without the consent of any other person,* have operated to bar the remainder.

But the above provision only applies to assurances which are effectual to bar the issue, and not to an unenrolled deed (*a*).

Estates *pur autre vie.*

If an estate *pour autre vie* is limited in the form of an estate tail, although it will descend according to the terms of the limitation during its continuance, the *quasi* tenant in tail can bar the entail and the remainders over by any act *inter vivos,* without observing the formalities prescribed by the Fines and Recoveries Abolition Act, but not by will, and the existence of prior incumbrances creates no impediment (*b*). The renewal by a *quasi* tenant in tail of a lease for lives will bar the entail and the remainders over, and the result will be the same, although the surrendered lease may be vested in trustees and they do not concur in the surrender (*c*). If the *quasi* entail is preceded by a life interest, the remainders over will not be barred without the concurrence of the tenant for life (*d*), although without such concurrence it would seem that the *quasi* tenant in tail can bar himself and his issue (*e*).

(*y*) 3 & 4 W. 4, c. 27, sects. 21, 22; 37 & 38 Vict. c. 57, sect. 9.

(*z*) 37 & 38 Vict. c. 57, sect. 6.

(*a*) Penny *v.* Allen, 7 D. M. & G. 409; Morgan *v.* Morgan, L. R. 10 Eq. 99.

(*b*) Allen *v.* Allen, 2 Dru. & War. 327.

(*c*) Grey *v.* Mannock *v.* Eden, 339; Blake *v.* Blake, 1 Cox, 266; Campbell *v.* Sandys, 1 Sch. & Lef. 225; Doe d. Blake *v.* Luxton, 6 Term Rep. 289.

(*d*) Wastney *v.* Chappell, 3 Bro. P. C. 53, Tom. Ed.

(*e*) Allen *v.* Allen, 2 Dru. & War. 337.

No. I.

DISENTAILING ASSURANCE BY TENANT IN TAIL IN POSSESSION.

DISENTAILING ASSURANCE *of* FREEHOLDS *by a* TENANT IN TAIL *in* POSSESSION.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant in tail*), of the one part, and C. D., of, &c. (*grantee to uses*), of the other part: WHEREAS by an indenture dated, &c., and made, &c., the capital messuage or mansion house called ——, and divers other messuages, lands, and hereditaments situate in the parishes of ——, in the county of ——, in the said indenture and the schedules thereto particularly described, were settled and assured to the use of H. B. during his life, with remainder (subject to certain charges which have determined) to the use of the first son of the said H. B. in tail male with divers remainders over: AND WHEREAS the said H. B. died on the —— day of ——, 18—: AND WHEREAS the said A. B. is the first son of the said H. B., and he attained the age of twenty-one years on the —— day of ——, 18—: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf, convey unto the said C. D., ALL the capital and other messuages, lands, tenements, and hereditaments comprised in and settled by the hereinbefore recited indenture, and all other (if any) the lands, tenements and hereditaments in England or Wales of or to which the said A. B. is seised or entitled as tenant in tail, whether at law or in equity, under the said indenture, or otherwise howsoever: TO HOLD the same (freed and discharged from the estate tail of the said A. B., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail), unto the said C. D. in fee simple, TO THE USE of the said A. B., in fee simple.

Recital of settlement.

Death of tenant for life, and attainment by tenant in tail of his majority.

Witnessing part.

Conveyance of parcels

to grantee to use of grantor in fee simple.

IN WITNESS, &c.

No. II.

CONVEYANCE *by a* TENANT *in* TAIL *in* POSSESSION *to a Purchaser for an* ESTATE *in* FEE SIMPLE.

CONVEYANCE BY TENANT IN TAIL IN POSSESSION.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part (*Recite settlement, death of H. B., and that A. B. is eldest son as in last Precedent*): AND WHEREAS the said A. B. has agreed to sell to the said C. D. the hereditaments hereinafter described (being part of the hereditaments settled by the hereinbefore recited indenture) at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £——, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, doth by this deed intended to be enrolled in the High Court of Justice (Chancery Division) pursuant to the statute in that behalf convey unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same (freed and discharged from the estate tail of the said A. B., and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail) unto and to the use of the said C. D. in fee simple.

Parties.

Agreement for sale in fee simple.

Conveyance of parcels to purchaser in fee free from estate tail and remainders over.

IN WITNESS, &c.

No. III.

DISENTAILING ASSURANCE *by a* TENANT *in* TAIL *in* REMAINDER: *the* PROTECTOR *joins to give his* CONSENT.

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant in tail in remainder*), of the first part,

Partie

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR.

H. B., of, &c. (*protector*), of the second part, and C. D., of, &c. (*releasee*), of the third part: WHEREAS M. N., late of ——, deceased, duly made his will, dated the —— day of ——, and thereby gave and devised all his manors, messuages, lands, tenements, and hereditaments situate in the county of ——, being freehold of inheritance, to the use of the said H. B. and his assigns for his life, without impeachment of waste, with remainder after his decease to the use of his first and other sons successively in tail male, with divers remainders over. (*Death of testator and probate of his will, and that A. B. is eldest son of H. B., and has attained twenty-one*): NOW THIS INDENTURE WITNESSETH that the said A. B., with the consent of the said H. B. as the protector of the settlement made by the said will (testified by his being a party to and executing these presents), doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf convey unto the said C. D., ALL and singular the manors, messuages, lands, and hereditaments devised by the said will, or which have by any means become subject to the uses thereof: TO HOLD the same (subject to the estate for life of the said H. B. therein, and to the powers and privileges annexed to or exercisable during the continuance of the same estate, but freed and absolutely discharged of and from the said estate tail of the said A. B., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail), unto the said C. D., in fee simple, TO THE USE of the said A. B., in fee simple.

Recite will.

Conveyance by tenant in tail with consent of protector.

To grantee in fee simple to use of grantor in fee simple, subject to life estate of protector.

IN WITNESS, &c.

No. IV.

DEED *barring the* Entail *in* Stock *liable to be laid out in the purchase of* Land.

OF STOCK TO BE LAID OUT IN LAND.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*tenant for life*), of the first part, C. D., of, &c. (*tenant in tail*), of the second part, and L. M., of, &c. and N. O., of, &c. (*trustees*), of the third part: Whereas G. H., late of ——, deceased, duly made his will, dated the —— day of ——, and thereby gave and bequeathed a sum of £1,500 Consolidated £3 per Cent. Annuities, then standing in his name, unto the said L. M. and N. O., their executors, administrators, and assigns, upon trust to convert the same into money as soon as conveniently might be after his (the said testator's) decease, and to lay out the moneys to arise thereby in the purchase of freehold lands of inheritance; And the said testator directed that the lands so to be purchased should be conveyed and settled to the use of his wife the said A. B. for her life, and after her decease to the use of his eldest son the said C. D. in tail male, with divers remainders over (*Death of testator and probate of will*): And whereas, shortly after the death of the said testator, the said sum of £1,500 Consolidated £3 per Cent. Annuities was transferred into the names of the said L. M. and N. O. in the books of the Governor and Company of the Bank of England, but no part thereof has been laid out in the purchase of land pursuant to the aforesaid trust and direction in that behalf contained in the said recited will: And whereas the said A. B. and C. D. have agreed to disentail the said stock in the manner hereinafter expressed; NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D. do by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf assign unto the said L. M. and N. O.: All that the said sum of £1,500 Consolidated £3 per Cent. Annuities, and the dividends thereof: To hold the same (freed and discharged from the trust or direction contained in the said will for laying out the said stock or the moneys to arise by the sale thereof in the purchase of lands,

Parties.

Recite will.

Death of testator, and probate of will.

That stock has not been laid out in land.

Assignment of stock to trustees.

OF STOCK TO BE LAID OUT IN LAND.

In trust for tenant for life, with remainder to tenant in tail absolutely.

and from the estate tail of the said C. D. therein, and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail) unto the said L. M. and N. O., as personal estate: IN TRUST as to the dividends thereof, for the said A. B. during her life; and from and after her decease, IN TRUST for the said C. D., absolutely.

IN WITNESS, &c.

No. V.

CONVEYANCE TO USES BY TENANT FOR LIFE AND TENANT IN TAIL.

CONVEYANCE *by a* TENANT FOR LIFE *and* TENANT IN TAIL *in remainder of* LANDS, *and* STOCK *liable to be laid out in lands, to such uses as they shall* JOINTLY *appoint, and in* DEFAULT *of such* APPOINTMENT, *to the subsisting* USES *under the original* SETTLEMENT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, D. B., of, &c. (*tenant in tail in remainder*), of the second part, and E. F., of &c. (*grantee to uses*), of the third part: WHEREAS by an indenture dated, &c., and made, &c., the manor of ——, and the capital messuage or mansion-house called ——, and divers other messuages, lands, tenements, and hereditaments situate in the parishes of ——, in the said indenture particularly described were limited and assured, from and after the solemnization of the said then intended marriage, to the use of the said A. B. during his life without impeachment of waste, with remainder after his decease to the use and intent that if C. B. (*the wife of A. B.*) should survive the said A. B., she should receive thereout a yearly rent-charge of £—— during her life by way of jointure, and subject thereto to the use of the said (*trustees of term*), their executors, administrators, and assigns, for the term of 1000 years computed from the decease of the said A. B., UPON the trusts therein declared for raising portions for the younger children of the said then intended marriage, with remainder to the use of the first son of the said then

Recite settlement

intended marriage in tail male, with remainders over: AND in the said indenture is contained the usual power of sale and exchange, and a direction that the moneys to arise from any such sale shall be laid out in the purchase of other hereditaments, and shall in the meantime be invested in or upon the public stocks or funds of the United Kingdom, or upon government or real securities: AND WHEREAS some of the hereditaments comprised in the said indenture of settlement have been from time to time disposed of by way of sale or exchange under the powers in that behalf contained in the said indenture, and part of the moneys arising from such sales has been laid out and invested in the purchase of other hereditaments which have been conveyed to the uses of the said indenture of settlement, and the remainder thereof is represented by the sum of £—— Consolidated £3 per cent. Annuities standing in the names of the ——, the trustees of the said indenture, in the books of the governor and company of the Bank of England: AND WHEREAS the said D. B. is the first son of the said A. B. and C. his wife, and he attained the age of twenty-one years on the —— day of —— last: AND WHEREAS the said A. B. and D. B. have agreed that the said hereditaments and stock shall be respectively disentailed for the purposes and in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, THE said A. B., as to his estate for life under the said indenture of settlement, AND the said D. B., as to the remainder in fee simple expectant on such estate for life, with the consent of the said A. B. as the protector of the settlement, do and each of them doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf convey unto the said E. F., ALL the manor, messuages, lands, tenements, and hereditaments comprised in and settled by the hereinbefore recited indenture of settlement, except such of them as have been disposed of by way of sale or exchange as aforesaid, AND ALSO (by way of conveyance and not of exception) ALL other the hereditaments which by purchase, exchange, inclosure, or otherwise, have become and are now subject either at law or in equity to the uses of the said indenture: To HOLD the said premises (subject to the said yearly rent-charge of £——· by the said indenture of settlement limited to the said

CONVEYANCE TO USES BY TENANT FOR LIFE AND TENANT IN TAIL.

Sale of part of settled property, and investment of proceeds in Consols.

Agreement to disentail.

Witnessing part.

Tenant for life and tenant in tail convey.

Parcels.

Habendum (subject to charges)

CONVEYANCE TO USES BY TENANT FOR LIFE AND TENANT IN TAIL.

C. B. as aforesaid, and the powers and remedies for enforcing payment thereof, and subject also to the said term of 1000 years limited by the same indenture and the trusts thereof, but freed and discharged from the estate in tail male therein of the said D. B., and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate in tail male), unto the said E. F. in fee simple: To such uses, upon such trusts, and with and subject to such powers and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint: And in default of and until such appointment, and so far as any such appointment shall not extend, To such uses, upon such trusts, and with and subject to such powers and provisions as were subsisting in the said premises respectively immediately before the execution of these presents: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, The said A. B. and D. B. do by this deed intended to be enrolled as aforesaid assign unto the said E. F., The said sum of £—— Consolidated £3 per cent. Annuities, and all other (if any) the moneys, stocks, funds, and securities liable to be laid out in the purchase of lands to be settled to the uses of the said indenture of settlement: To hold the same (freed and discharged from the estate in tail male of the said D. B. and all remainders, &c. (*as before*)), unto the said E. F., Upon such trusts and with and subject to such powers and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint: And in default of and until such appointment, and so far as any such appointment shall not extend, upon the trusts, and with and subject to the powers and provisions which were subsisting therein immediately before the execution of these presents.

To such uses as tenant for life and tenant in tail shall jointly appoint, and in default of appointment, to uses subsisting under settlement.

Assignment of stock.

Upon similar trusts.

In witness, &c.

No. VI.

CONVEYANCE *of an* ESTATE *by a* TENANT IN TAIL *in remainder, with the consent of the* TENANT FOR LIFE *(subject to the uses by the* SETTLEMENT *limited to take effect prior to the* ESTATE TAIL*), to like uses as in the last Precedent.*

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR TO USES.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN D.B., of, &c. (*tenant in tail in remainder*), of the first part, A. B., of, &c. (*tenant for life*), of the second part, and E. F., of, &c. (*grantee to uses*), of the third part (*recite indenture whereby divers hereditaments therein described were settled to use of A. B. for life, with remainder to the first and other sons of A. B. in tail male, with remainder to C. B. for life, with remainder to the first and other sons of C. B. successively in tail male, with divers remainders over*): AND WHEREAS in exercise of powers in that behalf contained in the said indenture of settlement, some of the hereditaments therein comprised have been from time to time sold, and the moneys arising from such sales have been laid out in the purchase of other hereditaments which have been conveyed to the uses of the said indenture of settlement: [AND WHEREAS (*a*) in the schedule hereunder written are set forth the particulars as well of the hereditaments originally comprised in the said indenture of settlement which now remain unsold, as also of the hereditaments which have been purchased and conveyed to the uses of the said indenture as aforesaid :] AND WHEREAS the said A. B. has at present no issue male : AND WHEREAS the said C. B. died on the —— day of —— : AND WHEREAS the said D. B. is the first son of said C. B. and he attained the age of twenty-one years on the —— day of—— : NOW THIS INDENTURE WITNESSETH, that in pursuance of an agreement in this behalf entered into between the said A. B. and D. B., THE said D. B. with the consent of the said A. B. as the protector of the settlement (testified by his executing these presents), doth by this deed intended to be enrolled in the High Court of Justice (Chancery division), pursuant to the statute in that behalf, convey unto the

Recite settlement creating the entail.

Exercise of power of sale and exchange.

That settled hereditaments are described in schedule.

Conveyance by tenant in tail with consent of protector.

(*a*) This recital may be omitted if it is not convenient to add a schedule. See the last Precedent.

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR TO USES.

Parcels. (subject to prior estates).

said E. F., ALL the messuages, lands, tenements, and hereditaments [described in the schedule hereunder written: AND ALL other (if any) the lands, tenements, and hereditaments] (*b*) now subject or liable at law or in equity to the uses and limitations of the hereinbefore recited indenture of settlement: TO HOLD the same (freed and discharged from the estate in tail male of the said D. B. therein, and from all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, but subject and without prejudice to all uses, estates, limitations, and charges by the said indenture of settlement limited or created, and to take effect prior to the estate in tail male of the said D. B., and to all the powers and privileges annexed or belonging to such prior uses, estates, and limitations respectively, or exerciseable during the continuance thereof respectively), unto the said E. F. in fee simple: NEVERTHELESS TO SUCH USES, upon such trusts, and with and subject to such powers and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint: AND IN DEFAULT of and until such joint appointment, and so far as any such joint appointment shall not extend, To such and the same uses, upon such and the same trusts, and with and subject to such and the same powers and provisions as were subsisting in the said hereditaments and premises immediately before the execution of these presents.

To such uses as tenant for life and tenant in tail should appoint, and in default of appointment to the uses of the settlement.

IN WITNESS, &c.

No. VII.

SURRENDER *by* TENANTS *in* COMMON *in* TAIL *of* COPYHOLDS *to* BAR *the* ENTAIL.

SURRENDER OF COPYHOLDS TO BAR ENTAIL.

Tenants in common in tail surrender

The MANOR *of* —— } BE IT REMEMBERED, that on
in the County of —— } this —— day of ——, A. B., of, &c., and C. D., of, &c., (being the two only daughters of X. Y., late of, &c., deceased), come before L. M., of, &c., steward of the said

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(*b*) The words in brackets will be omitted, if there is no schedule.

SURRENDER OF COPYHOLDS TO BAR ENTAIL.

manor out of court, and for the purpose of barring their respective estates tail in the hereditaments hereinafter mentioned, and all remainders, estates, and powers to take effect after the determination or in defeasance of such estates tail respectively, surrender into the hands of the lord of the said manor, by the hands and acceptance of his steward, according to the custom thereof, ALL THAT, &c. (*parcels*), To which hereditaments the said X. Y. was admitted tenant at a court holden in and for the said manor on the —— day of ——, 18—, and which hereditaments were (with other hereditaments) devised by the will of the said X. Y., dated the —— day of ——, 18—, unto his daughters as tenants in common in tail, with remainders over, AND all other (if any) the copyhold hereditaments held of the said manor of or to which the said A. B. and C. D. are seised or entitled as tenants in common in tail under the said will or otherwise: TO THE USE of the said A. B. and C. D. and their heirs in equal shares as tenants in common, according to the custom of the said manor, by and under the rents, suits, and services therefor due, and of right accustomed, freed and discharged from the respective estates tail of them the said A. B. and C. D., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estates tail respectively.

parcels

to use of surrenderors as tenants in common in fee

free from estates tail, &c.

This surrender was taken and accepted the day and year above written, by me } (Signed) L. M. (steward).

No. VIII.

CONSENT *of* PROTECTOR *of an* ESTATE TAIL *in remainder in* COPYHOLDS *by a* DEED, *to be entered on the Court Rolls for the purpose of enabling the Tenant to bar the* ENTAIL.

CONSENT OF PROTECTOR.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c. (*tenant for life and protector of the settlement*), sends greeting: WHEREAS C. D., late of, &c., deceased, duly made his will dated the —— day of ——, and thereby gave all

Recite devise to protector

CONSENT OF PROTECTOR.

for life, remainder to tenant in tail.

his copyhold or customary hereditaments, situate at ——, and held of the manor of ——, unto the said A. B. and his assigns for his life, and from and after his decease to E. F. in tail male, with divers remainders over: AND WHEREAS the said C. D. died on the —— day of ——, without having revoked or altered his said will: AND WHEREAS the said A. B. has agreed to give his consent to the disposition by the said E. F. of the copyhold or customary hereditaments devised by the said will in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement in this behalf, the said A. B., as protector of the settlement created by the said will of the said C. D., doth by these presents consent to any and every surrender, disposition, or assurance which the said E. F. may make or execute at any time or times hereafter, of the said copyhold or customary hereditaments so devised as aforesaid, for barring the estate tail of the said E. F. in the same hereditaments, and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, and for limiting the same hereditaments (subject and without prejudice to the said estate for life therein of the said A. B., and all powers and privileges annexed to such estate for life), to the use of the said E. F., and his heirs, or otherwise as he the said E. F. may think proper.

Protector is desirous of giving his consent.

Protector consents to the estate tail being barred.

IN WITNESS, &c.

No. IX.

SURRENDER TO BAR ESTATE TAIL IN REMAINDER IN COPYHOLDS.

SURRENDER *to bar an* ESTATE TAIL *in* REMAINDER *in* COPYHOLDS, *the Protector's consent having been obtained by Deed.*

The MANOR *of* ——
in the county of ——

WHEREAS, at a court holden in and for this manor on the —— day of ——, C. D., late of, &c., was admitted tenant to the copyhold hereditaments hereinafter described: AND WHEREAS the said C. D. duly made his will dated the —— day of ——, and thereby gave and devised all his copyhold and customary hereditaments held of the said manor unto A. B. and his assigns during his life, and from

Devise to protector for life, remainder to tenant in tail male.

Death of testator.

Admission of protector.

Deed poll giving protector's consent.

and after his decease to E. F. in tail male, with divers remainders over: AND WHEREAS the said C. D. died on the —— day of ——, without having revoked or altered his said will: AND WHEREAS, at a court holden for the said manor of ——, on the —— day of ——, the said A. B. was duly admitted tenant of the copyhold hereditaments hereinafter described as tenant for life under the said will: AND WHEREAS by a deed poll under the hand and seal of the said A. B., dated the —— day of ——, the said A. B., as protector of the settlement created by the said will, did give his consent to any and every surrender, disposition, or assurance which the said E. F. might make or execute at any time or times thereafter of the said copyhold or customary hereditaments, for barring the estate tail of the said E. F. in the same hereditaments, and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, and for limiting the said hereditaments (subject and without prejudice to the said estate for life therein of the said A. B., and all powers and privileges annexed to such estate for life), to the use of the said E. F., his heirs and assigns, for ever, or otherwise as he the said E. F. might think proper, according to the custom of the said manor: NOW BE IT REMEMBERED, that the said E. F., on this —— day of ——, comes before L. M., of, &c., steward of the said manor, out of court, and surrenders into the hands of the lord of the said manor, by the hands and acceptance of the said steward, according to the custom of the said manor (the said recited deed poll being first produced to the steward) (*a*), ALL THAT, &c. (*parcels*), To which hereditaments and premises the said A. B. was admitted on the —— day of ——, as aforesaid, AND all other (if any) the copyhold hereditaments held of the said manor, of or to which the said E. F. is seised or entitled as tenant in tail under the said will or otherwise, To THE USE of the said E. F. and his heirs for ever, at the will of the lord, according to the custom of the said manor, at and under the rents and services, therefor due and of right accustomed, subject nevertheless and without prejudice to the said estate for life of the said A. B., and all powers and privileges annexed to such estate, but freed and discharged from the estate tail of the said E. F., and

Surrender accordingly to bar estate tail.

(*a*) If the protector gives his consent in person, the following words should be introduced: "With the consent of the said A. B., protector of the settlement made by the said will, to the steward at the same time given by the said A. B."

SURRENDER TO BAR ESTATE TAIL IN REMAINDER IN COPYHOLDS.

all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail.

This surrender was accepted
and taken the day and year
first above written, by me (L. M.)
Steward of the manor.

No. X.

DISENTAILING ASSURANCE BY EQUITABLE TENANT IN TAIL OF COPYHOLDS.

DISENTAILING ASSURANCE *by an* EQUITABLE TENANT *in* TAIL *of* COPYHOLDS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant in tail*), of the one part, and C. D., of, &c., and E. F., of, &c. (*trustees*), of the other part (*Recite will whereby the copyhold hereditaments were devised unto and to the use of the said C. D. and E. F., their heirs and assigns, upon trust for M. N. for his life, with remainder in trust for the said A. B. in tail male.—Death of testator without having altered his said will, and probate thereof*): AND WHEREAS the said M. N. hath lately died: AND WHEREAS the said A. B. is desirous of barring his equitable estate tail in the said copyhold or customary hereditaments devised by the said recited will as aforesaid, and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, and of acquiring an estate in customary fee simple in the same hereditaments: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed intended to be entered on the court rolls of the said manor, convey unto the said C. D. and E. F., ALL, &c. (*copyhold parcels*): AND ALL OTHER the copyhold hereditaments (if any) held of the said manor, to which the said A. B. is entitled as tenant in tail in equity under the said will or otherwise: TO HOLD the same unto the said C. D. and E. F., in customary fee simple, To the intent that they may henceforth stand seised of and interested in the same, IN TRUST for the said A. B., in customary fee simple, freed and absolutely discharged of and from the said estate tail of the said A. B., and all re-

Death of tenant for life.

Desire to bar entail.

Conveyance by tenant in tail to trustees in trust for tenant in tail in fee simple.

DISENTAILING ASSURANCE BY EQUITABLE TENANT IN TAIL OF COPYHOLDS.

mainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail.

IN WITNESS, &c.

No. XI.

DEED *by* TENANT *in* TAIL *in* REMAINDER *to create a* BASE FEE.

BY TENANT IN TAIL IN REMAINDER TO CREATE A BASE FEE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant in tail*), of the one part, and C. D., of, &c. (*grantee*), of the other part (*Recite will devising hereditaments to X. Y. for life, with remainder to A. B. in tail, with remainder over*): AND WHEREAS the said A. B. is desirous of barring his estate tail in remainder of the said hereditaments and of converting the same into a base fee: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed, intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf, convey unto the said C. D., ALL, &c. (*parcels*), and all other (if any) the hereditaments of or to which the said A. B. is seised or entitled for an estate tail in remainder under the said will: To HOLD the same (subject to the said estate for life of the said X. Y. therein), unto the said C. D. and his heirs, To the use of the said A. B., his heirs and assigns, freed and discharged from the estate tail of the said A. B., and to the intent that the same may be converted into a base fee.

Tenant in tail conveys parcels to grantee (subject to estate for life), to use of grantor for a base fee.

IN WITNESS, &c.

No. XII.

DEED *to* ENLARGE *a* BASE FEE *into an* ESTATE *in* FEE SIMPLE ABSOLUTE (*by Indorsement on last Precedent*).

DEED TO ENLARGE BASE FEE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*owner of base fee*), of the one part, and the

DEED TO ENLARGE BASE FEE.

Death of tenant for life.

That owner of base fee is desirous of enlarging same.

Owner of base fee conveys parcel

to grantee to use of grantor in fee simple free from remainders, &c

within-named C. D. (*grantee*), of the other part: WHEREAS the within-named X. Y. (*tenant for life*) died on the —— day of ——: AND WHEREAS the said A. B. is desirous of enlarging the base fee into which his estate tail was conveyed by the within-written indenture into an estate in fee simple absolute: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf, convey and confirm unto the said C. D., THE hereditaments and premises comprised in and conveyed by the within-written indenture, or expressed so to be: TO HOLD the same unto the said C. D., in fee simple, TO THE USE of the said A. B., in fee simple, FREED AND DISCHARGED from all remainders, estates, and powers to take effect after the determination or in defeasance of the base fee into which the estate tail of the said A. B. was converted by the within-written indenture, and to the intent that such base fee may be enlarged into an estate in fee simple absolute.

IN WITNESS, &c.

BONDS (a).

No. I.

BOND *for* PAYMENT *of* MONEY *by* INSTALMENTS.

FOR PAYMENT OF MONEY BY INSTALMENTS.

Bond.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c., (*obligor*), am bound (*b*) to C. D., of, &c. (*obligee*), in the sum of £—— (*twice the amount of the sum to be repaid*), to be paid to the said C. D. SEALED with my seal: DATED this —— day of ——, in the year 18—.

Condition of Bond.

NOW THE CONDITION of the above-written bond or obligation is such, that if the above-bounden A. B. shall pay to the said C. D. the sum of £—— by the instalments following (that is to say), the sum of £——, part thereof, on the —— day of —— now next ensuing, the sum of £——, other part thereof, on the —— day of ——, 18—, and the sum of £——, residue thereof, on the —— day of —— in the same year, and shall also at the several times hereinbefore appointed for payment of the said several instalments of the

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(*a*) By the recent Stamp Act (33 & 34 Vict. c. 97), the stamp duties chargeable on bonds for payment or repayment of money or the transfer or retransfer of stock, are the same as on a mortgage for the same purposes. (See Stamps on Mortgages, vol. i.) The stamp duties chargeable where the bond is to secure an annuity, except upon the original creation thereof by way of sale are stated under the head of Stamps on Settlements, *suprà*, p. 198. A bond of any kind not specifically charged with any duty is liable to a 10*s.* stamp, unless the amount limited to be recoverable does not exceed £300, in which case the duty will be the same *ad valorem* duty as on a bond for the amount limited.

(*b*) By the Conveyancing Act, 1881, sect. 59, it is provided that a bond or obligation under seal, although not expressed to bind the heirs, shall operate in law to bind the heirs and real estate as well as the executors and administrators and personal estate of the obligor.

FOR PAYMENT OF MONEY BY INSTALMENTS.

said sum of £——, pay to the said C. D., interest for the said sum of £——, or such part thereof as for the time being shall remain unpaid, after the rate of £—— for every £100 by the year (such interest to commence and be computed from the day of the date of the above-written bond or obligation), THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

No. II.

TO SECURE ANNUITY.

BOND *for* SECURING *the* PAYMENT *of an* ANNUITY (*a*).

(*BOND from A. B.* (*obligor*), *to C. D.* (*obligee*), *in the sum of* £——, *suprà*, p. 569.) WHEREAS the above-bounden A. B. lately agreed with the said C. D. for the sale to him of an annuity of £——, during his life, for the sum of £——, such annuity to be secured by the bond of the said A. B.: AND WHEREAS, in pursuance of the said agreement, the said C. D. has paid to the said A. B. the sum of £——, and the said A. B. has executed the above-written bond.

Condition of Bond.

NOW THE CONDITION of the above-written bond is such that if the said A. B. shall pay to the said C. D. during his life, one annuity or yearly sum of £—— by equal quarterly portions, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, the first quarterly portion of the said annuity to be paid on the —— day of ——, then the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

(*a*) The stamp duty on this bond will be the same *ad valorem* duty as on a conveyance in consideration of the purchase-money to be paid for the annuity. (See 33 & 34 Vict. c. 97, s. 75.)

No. III.

BOND *of the* VENDOR *of an* ADVOWSON *for the payment to the purchaser of an* ANNUAL SUM *equal to* INTEREST *on the purchase-money until a* VACANCY.

BY VENDOR OF ADVOWSON FOR PAYMENT OF ANNUAL SUM UNTIL VACANCY.

Recite agreement for sale of advowson and annual sum.

(*BOND from A. B.* (*vendor*), *to C. D. in the penal sum of* £2000.) WHEREAS the said A. B. lately agreed with the said C. D. for the sale to him of the advowson of the rectory or parish church of ——, and of an annuity of £80 to be paid to the said C. D. until the said benefice should become vacant, and to be secured by the bond of the said A. B., at the price of £2000: AND WHEREAS in pursuance of the said agreement, the said C. D. has paid to the said A. B. the said purchase-money of £2000, and in consideration thereof the said A. B. has conveyed the said advowson unto and to the use of the said C. D. in fee simple by an indenture bearing even date with the above-written bond, and has also executed the above-written bond:

Payment of purchase-money and advowson.

Condition of Bond.

NOW THE CONDITION of the above-written bond is such that if the said A. B. shall pay to the said C. D. the annual sum of £80, until the said benefice shall become vacant by the death, resignation, or deprivation of X. Y., the present incumbent thereof, or if the said X. Y. shall be promoted to a bishopric, and the crown shall thereupon present to the said benefice, then, until the death, resignation, or deprivation of the person presented by the crown as aforesaid, the said annual sum to be paid by equal half-yearly payments on the —— day of —— and the —— day of ——, the first of such payments to be made on the —— day of —— next, then and in such case the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

No. IV.

TO PURCHASER TAKING DOUBTFUL TITLE.

BOND *for quiet* ENJOYMENT *given by* VENDOR *to* PURCHASER, *taking a doubtful* TITLE.

Recite conveyance of property to obligee,

(*BOND from A. B.* (*vendor*), *to C. D.* (*purchaser*), *in the penal sum of* £——.) WHEREAS by an indenture, bearing even date with these presents and made between the above-bounden A. B. of the first part, the said C. D. of the second part, and E. F. of the third part, for the consideration therein mentioned, ALL, &c. (*parcels*), have been conveyed and assured to such uses as the said C. D. by any deed or deeds, &c. (*dower uses*): AND WHEREAS the hereditaments assured by the said indenture were formerly the property of G. H., and were conveyed in exchange by him to W. M., late of, &c., deceased, and his heirs, by an indenture dated, &c., and made, &c., and the title of the said A. B. to the said hereditaments is derived under the will of the said W. M., which bears date the —— day of ——, and was proved, &c., and under an indenture of appointment, dated the —— day of ——, being an appointment to him the said A. B., under a power in the said will contained: AND WHEREAS, previously to the execution of the said indenture of even date with these presents it was stipulated and agreed that in addition to the ordinary covenants for title contained in the said indenture bearing even date herewith the said A. B. should, for the satisfaction and indemnity of the said C. D., execute the above-written bond or obligation, subject to the condition hereinafter contained:

and circumstances connected with the title of obligor.

Agreement for Bond.

Condition of Bond.

NOW THE CONDITION of the above-written bond or obligation is such, that if the said C. D., his appointees, heirs, or assigns, shall from time to time, and at all times hereafter, hold, possess, and enjoy, the hereditaments comprised in and assured by the said indenture of even date with these presents, or expressed so to be, and every part thereof, and receive and take the rents and profits of the same, and every part thereof, for his and their own use, without any lawful let, suit, trouble, eviction, claim or demand whatsoever of, from, or by any person or persons whomsoever, and free and clear of and from all adverse estates, titles, liens, charges, and incumbrances whatsoever, THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

No. V.

BOND *of* INDEMNITY *by a* VENDOR *to a* PURCHASER *on account of the* LOSS *of certain* TITLE DEEDS.

OF INDEMNITY BY VENDOR FOR LOSS OF TITLE DEEDS.

(BOND from A. B. (obligor), to C. D. (obligee), in the penal sum of £——.) Recite conveyance to C. D. (purchaser): AND WHEREAS certain indentures of lease and release, dated the —— day of ——, and made between, &c. (*parties*), whereby the hereditaments comprised in the said indenture of even date herewith were (as is represented by the said A. B.) conveyed to the said A. B. in fee simple, have been diligently sought for by the said A. B., but cannot be found: AND WHEREAS previously to the execution of the said indenture of even date herewith, it was agreed that for the satisfaction and indemnity of the said C. D., and in addition to the ordinary covenants for title contained in the said indenture, the said A. B. should execute the above-written bond subject to the condition hereinafter contained: NOW THE CONDITION of the above-written bond or obligation is such, that if the said A. B. shall at all times hereafter keep indemnified the said C. D., his heirs and assigns, from and against all actions, losses, costs, charges, expenses, claims, and demands whatsoever in respect of the said hereditaments and premises comprised in the said recited indenture of even date herewith to which he or they would not have been subject or liable if the said indentures of lease and release of the —— and —— days of —— (being an absolute conveyance of the said hereditaments to the said A. B. in fee simple) had been duly delivered to the said C. D. upon the completion of the purchase, and in particular from and against all actions, losses, costs, charges, expenses, claims, and demands whatsoever to which he or they is or are, or shall or may become subject or liable in case it shall appear that the said indentures of lease and release are not in effect an absolute conveyance of all the said hereditaments to the said A. B. for an estate in fee simple in possession, free from incumbrances, or that the same indentures, or either of them, have or has been deposited with any person or persons by way of security, or have or has been otherwise dealt with in such a manner as to prejudice or affect

Recite loss of indentures,

and agreement for indemnity

Condition of Bond.

OF INDEMNITY BY VENDOR FOR LOSS OF TITLE DEEDS.

the absolute title of the said A. B. to the said hereditaments or any part thereof, THEN, and in such case, the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

No. VI.

BY SURVIVING PARTNER FOR PAYMENT OF DECEASED PARTNER'S SHARE.

BOND *by* SURVIVING PARTNER *for* PAYMENT *of the* ESTIMATED VALUE *of* DECEASED PARTNER'S SHARE *by* INSTALMENTS *to his* EXECUTORS, *and for* INDEMNIFYING *his* ESTATE *against the* PARTNERSHIP LIABILITIES.

Recite provisions in articles of partnership for making surviving partner purchaser of deceased partner's share.

(*BOND from A. B.* (*obligor*), *to C. D., of, &c., and E. F., of, &c.* (*obligees*), *in the penal sum of* £——.) WHEREAS by articles of partnership entered into on the —— day of ——, between the above bounden A. B. of the one part, and G. H. of the other part, it was, amongst other things, provided that the said A. B. and C. D. should from thenceforth become and be co-partners in the trade or business of ——, under the firm of ——, for the term of —— years thence next ensuing, and also that in case either of the said partners should die before the expiration of the said partnership, then the surviving partner should within three months next after the decease of the partner so dying, settle with the executors or administrators of the deceased partner all accounts and matters relating to the said partnership, and that such surviving partner should pay unto the executors or administrators of such deceased partner such a sum as by the books of the said partnership should appear to have been contributed by such deceased partner to the capital stock of the partnership at his decease, and that such surviving partner should be considered to be the purchaser of such share of the deceased partner in the said capital stock at such sum as aforesaid, and that such surviving partner should purchase the share of the deceased partner in the residue of the property, credits, and effects of the said partnership, and the value of such residue should be ascertained by two persons, one to be chosen by the surviving partner, and the other by the executors or administrators of the deceased partner, and that the surviving partner should enter into a bond for securing to the executors or administrators of the deceased partner the amount of such sum and valuation by three equal instalments at the respective periods of six, twelve, and eighteen calendar months next after the decease of the partner who should die as aforesaid, with interest at the rate of £5 per cent. per annum from the time of such decease, and also a bond for indemnifying the estate of the deceased partner against the debts and liabilities of the said partnership: And whereas the said G. H. died on the —— day of ——, having first duly made and executed his last will and testament in writing, dated, &c., whereby he appointed the said C. D. and E. F. executors thereof, who shortly afterwards duly proved the said will in the principal Registry of the Court of Probate: And whereas by the books of the said partnership it appears that the said G. H. had contributed the sum of £—— sterling to the capital stock of the partnership at his decease: And whereas, pursuant to the provision in this behalf contained in the said articles as aforesaid, the value of the share of the deceased partner in the said residue of the said property, credits, and effects of the said partnership has been ascertained to be the sum of £——, making with the aforesaid sum of £—— the sum of £——: And whereas, in further pursuance of the said provision, the said A. B. hath executed the above-written bond or obligation: NOW THE CONDITION of the above-written bond or obligation is such that if the said A. B. shall pay to the said C. D. and E. F., as part of the estate of the said G. H. deceased, the sum of £—— at the times and by the instalments following—*i.e.*, the sum of £—— on the —— day of ——, the sum of £—— on the —— day of ——, and the sum of £—— on the —— day of —— and also on the same several days interest for the said sum of £—— or such part thereof as for the time being shall remain unpaid, at the rate of £5 per cent. per annum, to be computed from the date of the above-written bond or obligation, and do and shall at all times hereafter save harmless and keep indemnified the said C. D. and E. F. respectively, and all the estate and effects of the said G. H. deceased, of and from all debts and liabilities whatsoever, in respect of the said partnership business, Then the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

BY SURVIVING PARTNER FOR PAYMENT OF DECEASED PARTNER'S SHARE.

Bond to be entered into by surviving partner for payment of estimated sum by instalments.

Death of deceased partner, appointing executors.

Contribution of deceased partner to capital stock.

Sum at which his share is estimated.

Bond executed to secure the payment of that sum, and as an indemnity against the partnership liabilities.

Condition of Bond.

No. VII.

BY OBLIGEE FOR PERFORMANCE OF DUTIES.

BOND *with two* SURETIES *for the* FAITHFUL PERFORMANCE *of* DUTIES *on* APPOINTMENT *to a* RESPONSIBLE OFFICE.

KNOW ALL MEN BY THESE PRESENTS that we, A. B., of, &c. (*principal obligor*), C. D., of, &c., and E. F., of, &c. (*sureties*), are jointly and severally bound to G. H., of, &c. (*obligee*) in the sum of £—— to be paid to the said G. H. Sealed with our seal: Dated this —— day of ——, 18—.

Appointment of obligor to office.

Condition of Bond.

WHEREAS the said A. B. hath lately been appointed to and now holds the office of —— in the said society: NOW THE CONDITION of the above-written bond or obligation is such that if the said A. B. shall from time to time and at all times hereafter, so long as he shall hold the said office of ——, duly and regularly account for and pay to the directors for the time being of the said society, or to any person or persons who may be appointed for this purpose, all moneys which shall come to his hands, either in the capacity of —— of the said society, or by any other means on account of the said society, and in every other respect fully and faithfully perform and discharge the duties and obligations which from time to time shall devolve on him in such capacity as aforesaid, THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

No. VIII.

BOND OF RESIGNATION.

BOND *of* RESIGNATION *of an* ECCLESIASTICAL BENEFICE (*a*).

Recital of agreement to present

(*BOND by A. B. to C. D. in the penal sum of £——*): WHEREAS the above-named C. D. is the patron of the rectory of the parish

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9 Geo. 4, c. 94.

(*a*) The 9 Geo. 4, c. 94, sect. 1, provides that every engagement made after the passing of the Act for the resignation of any spiritual office, being church of —— in the county of ——, and diocese of ——, which rectory is now vacant by the death of X. Y., the late rector thereof; and the said C. D. is about to present the above-bounden A. B. to the said rectory: AND WHEREAS the said A. B. has agreed to resign the said rectory in favour of E. D., a son of the said C. D., and now a student of —— College, in the University of ——, in case he shall take holy orders, and the said C. D., or other the patron or patrons for the time being of the said rectory shall desire to present him thereto: NOW THE CONDITION of the above-written bond is such that in case the said E. D. shall at any time during the life of the said A. B. be admitted into the full orders of a priest of the Church of England, and the said A. B. shall within six calendar months after being requested so to do in writing by the said C. D. or

BOND OF RESIGNATION.

Obligor on condition of his executing Bond.

Condition of Bond.

a benefice with cure of souls, dignity, prebend, or living ecclesiastical, to the intent or purpose to be manifested by the terms of such engagement, that any one person whosoever, to be specially named and described therein, or one of two persons to be specially named and described therein, being such persons as are thereinafter mentioned, shall be presented to such spiritual office, or that the same shall be given or bestowed to or upon him, shall be valid, and the performance of the same may also be enforced in equity; provided that such engagement shall be so entered into before the presentation, nomination, collation, or appointment of the party so entering into the same as aforesaid.

Sect. 2 provides that where two persons shall be so specially named and described in such engagement, each of them shall be, either by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron or of one of the patrons of such spiritual office, not being merely a trustee or trustees of the patronage of the same, or of the person or one of the persons for whom the patron or patrons shall be a trustee or trustees, or of the person or one of the persons by whose direction such presentation, collation, gift, or bestowing shall be intended to be made, or of any married woman whose husband in her right shall be the patron or one of the patrons of such spiritual office, or of any other person in whose right such presentation, collation, gift, or bestowing shall be intended to be made.

Sect. 4 provides that one part of the deed, instrument, or writing by which such engagement shall be made, given, or entered into, shall, within two calendar months next after the date thereof, be deposited in the office of the registrar of the diocese wherein the benefice shall be locally situate.

Sect. 5 provides that every resignation to be made in pursuance of any such engagement as aforesaid shall refer to the engagement in pursuance of which it is made, and state the name of the person for whose benefit it is made, and that it shall not be lawful for the ordinary to refuse such resignation unless upon good and sufficient cause to be shown for that purpose, and the person for whose benefit it is made must be presented within six calendar months next after notice of such resignation shall have been given to the patron.

Sect. 6 provides that the Act shall not apply to presentations by the Crown, or by any ecclesiastical or other public body.

BOND OF RESIGNATION.

other the patron or patrons for the time being of the said rectory, well and effectually resign the said rectory to the bishop of the said diocese, and cause such resignation to be accepted, so that the said C. D. or other patron or patrons for the time being of the said rectory, may present thereto the said E. D., or in case the said E. D. shall not be admitted into priest's orders as aforesaid during the life of the said A. B., or the said A. B. shall not be requested to resign the said rectory in manner aforesaid, THEN and in any of the said cases the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

RELEASES AND INDEMNITIES.

No. I.

RELEASE *by* Residuary Legatees *to the* Trustees *and* Executors *of a* Will *on the distribution of the* Residuary Estate *of the* Testator (*a*).

RELEASE BY RESIDUARY LEGATEES.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c., and C. D., of, &c. (*releasors*), of the one part, and E. F., of, &c., and G. H., of, &c. (*releasees*), of the other part: (*Recite the will whereby the testator devised and bequeathed unto the said E. F. and G. H., their heirs, executors, administrators, and assigns, all his real and personal estate and effects, upon trust to sell and convert the same into money, and to stand possessed of the same, after the payment of his debts and legacies, in trust for the testator's wife for life, and after his decease, in*

Parties.

(*a*) Executors and trustees are entitled to have their accounts examined and settled before they hand over the balance to the cestuis que trust, and it is usual and proper in such case for the cestuis que trust to execute a formal deed of release. But if a trust is declared of a specified fund in favour of a specified person, so that there are in fact no accounts to be settled, and the trustee merely hands over the fund in its original state, in strict accordance with the declared trust, he is not entitled to require a release under seal: Chadwick *v.* Heatley, 2 Coll. 137; King *v.* Mullins, 1 Drew. 308.

In what cases executors and trustees should have a release.

Releases should be drawn so as to show on the face of the deed that the releasors are fully aware of all the circumstances connected with the subject of release, of their own rights and position, and of the position of the intended releasees as to breach of trust, liability, &c., and they should also explicitly state the claims to be released. Releases will be generally governed by the recitals, so that where the words of the release are general, but the recitals refer only to a particular matter, the release will be construed to relate in fact to the matter recited: Ramsden *v.* Hylton, 2 Ves. Sen. 304; Pritt *v.* Clay, 6 Beav. 503.

How releases ought to be drawn.

Where there are other persons than the releasors who can be interested in or may have claims on the matter or property to which the release relates, the releasing parties generally execute a covenant of indemnity as well as a release, but not otherwise.

trust for his children in equal shares, and appointed E. F. and G. H. executors of his will.—Death of testator leaving the said A. B. and C. D. his only surviving children; and probate of his will): AND WHEREAS the said testator at the time of his decease was seised in fee simple of a certain freehold messuage or tenement, being No. &c., and situate, &c.: AND WHEREAS, pursuant to the trust for that purpose contained in the said will, the said E. F. and G. H. sold the said freehold hereditaments for the sum of £——: AND WHEREAS the said E. F. and G. H. shortly after the death of the said testator, possessed themselves of his personal estate, and converted into money such part thereof as did not consist of money, and with and out of the moneys produced by the sale of the said hereditaments, and the calling in and conversion of the said personal estate, and with and out of such part of the said personal estate as originally consisted of money, paid the funeral and testamentary expenses and debts of the said testator, and the legacies bequeathed by the said will, and the legacy duty thereon respectively, and there remained in the hands of the said E. F. and G. H., after such payments, the balance or sum of £——: AND WHEREAS the said E. F. and G. H., pursuant to the trust in that behalf contained in the said will, invested the said sum of £—— in the purchase of £—— Consolidated £3 per Cent. Annuities: AND WHEREAS the said —— (*testator's wife*) died on the —— day of —— and administration of her estate and effects was on the —— day of —— granted to the said A. B. and C. D. by the principal registry of the Probate Division of the High Court of Justice: AND WHEREAS the dividends of the said sum of £—— Consolidated £3 per Cent. Annuities which accrued during the life of the said —— (*testator's wife*), were duly paid to her, and a proportionate part of the dividend which accrued due in the month of —— following her death was duly paid to the said A. B. and C. D. as her administrators as aforesaid, and the residue of the last-mentioned dividends, and also the dividends which subsequently accrued on the said stock up to the sale thereof hereinafter mentioned, were paid to the said A. B. and C. D. in their own respective rights in equal shares, as they the said A. B. and C. D. do hereby acknowledge: AND WHEREAS the said E. F. and G. H., at the request of the said A. B. and C. D., lately sold the said sum of £—— Consolidated £3 per Cent. Annuities,

Seisin by testator of freehold messuage.

Sale of freeholds, balance after paying testamentary expenses and debts.

Investment of balance.

Death of wife and administration of her effects.

Application of dividends of invested balance.

Sale of the stock.

and the said sale produced the sum of £—— sterling, after deducting brokerage: AND WHEREAS the said sum of £—— has been reduced by the payment thereout of the legacy duty, and of the costs and expenses of the said trustees incurred in relation to the said trusts to the sum of £——: AND WHEREAS the said E. F. and G. H. have, before the execution of these presents, paid the said sum of £—— to the said A. B. and C. D. in equal shares as they do hereby acknowledge: AND WHEREAS, previously to the last-mentioned payment, the said E. F. and G. H. rendered to the said A. B. and C. D. an account of the real and personal estate of the said testator, and of the disposition and application of the same and the proceeds thereof, and of the income thereof respectively, and the said A. B. and C. D. examined the said account and are satisfied therewith, as they do hereby acknowledge and declare: AND they have therefore agreed to execute such release as is hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B. and C. D. hereby release the said E. F. and G. H., and each of them, from all actions, claims, and demands whatsoever, for or in respect or on account of the real and personal estate of the said testator, and the rents, profits, and income thereof respectively, or any part or parts thereof respectively, or any act, deed, matter, or thing whatsoever done or omitted to be done by the said E. F. and G. H., or either of them, in or about the execution of the said will or the trusts thereof, or in anywise relating to the premises: [AND the said A. B. and C. D. hereby jointly and severally covenant (*a*) with the said E. F. and G. H. to keep them indemnified against all claims and demands which may be made against them or either of them or the estate of the said testator by any unsatisfied creditor or creditors of the said testator].

Payment of proceeds to residuary legatees, who are satisfied with account rendered.

Agreement for release.

Release by children to trustees and executors.

Covenant to indemnify against outstanding debts, if any.

IN WITNESS, &c.

(*a*) The covenant for indemnity as above should be given, if the executors have at the request of the residuary legatees omitted to insert the usual statutory notice for creditors, but not otherwise.

When executors are entitled to a covenant for indemnity.

No. II.

RELEASE BY REFERENCE TO SCHEDULES.

RELEASE *by* Residuary Legatees *to* Executors *and* Trustees, *where the accounts are set forth in* Schedules (*b*).

Parties.

Recite will, &c.

That furniture, &c., have been delivered to legatee for life.

That trustees have sold real estate and possessed themselves of personal estate and paid over residue to residuary legatees.

That particulars of estate and proceeds are set forth in first schedule.

THIS INDENTURE, made, &c., Between A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*releasors*), of the first part, and M. N., of, &c., and O. P., of, &c. (*releasees*), of the other part (*Recite will whereby the testator made certain pecuniary bequests, and bequeathed to —— for his life to the use of the household goods and furniture, plate, linen, china, glass, and books, that should be at his decease in his dwelling-house in ——, and whereby he devised and bequeathed all the residue of his real and personal estate unto the said M. N. and O. P., upon trust to sell and convert into money and to divide the proceeds between the said A. B., C. D., E. F., and G. H., equally, and appointed the said M. N. and O. P. executors of his said will, —death of testator and probate of his will*): And whereas the household furniture, and other personal chattels, the use of which was bequeathed by the said will to the said —— as aforesaid, have, since the decease of the said testator, been delivered to him, and are now in his possession: And whereas, pursuant to the trust in this behalf contained in the said recited will, the said M. N. and O. P. have sold all the real estate of the said testator, and have possessed themselves of his personal estate not specifically bequeathed by the said will, and have out of the said personal estate, and the proceeds of the said real estate, paid the funeral and testamentary expenses and debts of the said testator, and the legacies bequeathed by his said will, and all the duties payable in respect of the estate of the said testator, and have paid or transferred the clear residue of the said personal estate, and of the proceeds of the said real estate, to the said A. B., C. D., E. F., and G. H., in equal shares: And whereas the particulars of the personal estate of the said testator, and of the proceeds of the sale of his real estate are set

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(*b*) It is not usual to set forth the executorship accounts in schedules to the deed of release, but there are cases in which such a course may be desirable, and a form adapted to such cases is therefore inserted.

RELEASE BY REFERENCE TO SCHEDULES.

forth in the first part of the first schedule hereunder written, and the particulars of the sums received by the said trustees since the death of the said testator, for rent of his said real estate, and for interests and dividends on the several investments of the personal estate of the said testator are set forth in the second part of the same schedule: AND WHEREAS the particulars of the sums paid for the funeral and testamentary expenses and debts of the said testator, and for the several legacies bequeathed by his said will, and the duties payable in respect of his estate are set forth in the first part of the second schedule hereunder written, and the particulars of the several sums of money, stock, and securities respectively paid and transferred to the parties entitled thereto on account of the residue of the personal estate and effects of the said testator, and the proceeds of the sale of his said real estate, are set forth in the second part of the same schedule: AND WHEREAS the particulars set forth in the first and second schedules hereunder written have been carefully examined by the said A. B., C. D., E. F., and G. H., who are in all respects satisfied with the correctness thereof: AND WHEREAS for the satisfaction of the said M. N. and O. P., the said A. B., C. D., E. F., and G. H., have agreed to execute to them such a release as is hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B., C. D., E. F., and G. H., hereby release the said M. N. and O. P., and each of them, from all, &c. (*Release, suprà*, p. 581): PROVIDED NEVERTHELESS, that this release shall not extend to the household furniture and other personal chattels, the use of which was bequeathed by the said will, to the said —— as aforesaid.

That particulars of payments, &c., are set forth in second schedule.

That residuary legatees are satisfied with such particulars.

Witnessing part.

Release.

Provided that release shall not extend to furniture, &c.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

The First Part.

Particulars of the personal property of which the testator died possessed, and the proceeds of the sale of his real estate.

The Second Part.

Particulars of the sums accrued due since the death of the

RELEASE BY REFERENCE TO SCHEDULES.

said testator for the rent of the said real estate, and for interest and dividends on the several investments of the personal estate of the said testator.

THE SECOND SCHEDULE ABOVE REFERRED TO.

The First Part.

Particulars of sums paid for probate, funeral expenses, expenses attending the executorship, debts, and legacies.

The Second Part.

Particulars of the several sums of money, stock, and securities respectively paid and transferred to the parties entitled thereto on account of the residue of the personal estate and effects of the said testator, and the proceeds of the sale of his said real estate.

No. III.

RELEASE TO TRUSTEES WHERE SHARE IS RETAINED.

RELEASE *by* RESIDUARY LEGATEES *to the* TRUSTEES *and* EXECUTORS *of a* WILL *on the distribution of the* RESIDUARY ESTATE, *where the* SHARE *of a* DAUGHTER *is settled by the Will, and is* RETAINED *by the* TRUSTEES, *accordingly.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*one releasor*), of the first part, C. B., of, &c. (*another releasor*), of the second part, D. B., of, &c. (*another releasor*), of the third part, and E. F., of, &c., and G. H., of, &c. (*trustees*), of the fourth part (*Recite will of testator, giving residuary estate to trustees, in trust, to sell and convert and hold proceeds in trust for wife for life, and then for the children equally, the share of daughters to be settled—death of testator, leaving two sons and a daughter, A. B., C. B., and D. B., and probate of his will*): AND WHEREAS after the death of the testator the said trustees possessed themselves of his personal estate, and after paying thereout his funeral and testamentary expenses and debts, invested the residue, amounting to £——, on mortgage

Conversion of estate.

Payment of succession duty and expenses.

Payment of two-thirds to sons, and retainer by trustees of one-third for daughter and her issue.

security: (*Death of Wife*). And whereas the said E. F. and G. H. have since the death of the said —— (*wife*), called in the said sum of £——, and applied the sum of £——, part thereof in payment of the legacy duty, and of the expenses incidental to the distribution of the trust money, leaving the sum of £—— in their hands: And whereas the said E. F. and G. H. have before the execution of these presents, paid the sum of £—— (being one-third part of the said sum of £——), to the said A. B., and the like sum of £—— (being one other third part thereof), to the said C. B. (as the said A. B. and C. B. do hereby respectively acknowledge), and have retained the sum of £—— (being the remaining one-third part thereof), as and for the share of the said D. B., by the said will directed to be held in trust for her and her issue as aforesaid: And whereas previously to the said payment, the said E. F. and G. H. rendered to the said A. B., C. B., and D. B., an account of the estate of the said testator, and of the application thereof, and the said A. B., C. B., and D. B., examined the said account, and are satisfied therewith: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B., C. B., and D. B., hereby release, &c. (*as in Precedent No. I.*, p. 581, *to the end*): Provided always that these presents shall not extend to release the said E. F. and G. H., or either of them, from the said sum of £—— retained by them as and for the share of the said D. B. as aforesaid, or the future execution of the trusts declared concerning the same by the said will.

That account has been rendered and approved.

Witnessing part.

Release.

Release not to extend to share of daughter retained by trustees.

In witness, &c.

No. IV.

RELEASE *by the* NEXT OF KIN *to an* ADMINISTRATOR *on the* DISTRIBUTION *of the estate of an* INTESTATE.

BY NEXT OF KIN TO ADMINISTRATOR.

Parties.

Recital of death of intestate leaving a

THIS INDENTURE, made the —— day of ——, 18—, Between A. B., of, &c., C. B., of, &c., and D. B., of, &c. (*children of intestate*), of the one part, and E. B., of, &c. (*widow and administratrix of intestate*), of the other part: Whereas X. B., late of, &c., died intestate on the —— day of ——, 18—,

BY NEXT OF KIN TO ADMINISTRATOR.

widow and children.

Administration granted to widow.

Payment of debts and that residuary estate is set forth in first schedule.

Agreement for distribution, as shown in second schedule.

That widow had retained her share, and other lots had been made over to children.

That children have examined accounts.

Witnessing part.

Children release widow from all claims in relation to estate.

leaving the said E. B., his widow, and the said A. B., C. B., and D. B., his only children: And whereas letters of administration of the estate and effects of the said X. B., deceased, were on the —— day of —— granted to the said E. B., his widow, by or out of the principal probate registry of the High Court of Justice: And whereas the debts and funeral and testamentary expenses of the said X. B., deceased, have been paid and satisfied by the said E. B., and his residuary estate (after making such payments) consisted of the particulars set forth in the first schedule hereunder written: And whereas it was lately agreed between the parties hereto that the said residuary estate should be allotted and divided to and among them in manner following (that is to say), 1st, that Lot 1, consisting of the particulars set forth in the first part of the second schedule hereunder written, and being of the estimated value of one equal third part of the whole, should be retained by the said E. B. as her share; 2ndly, that Lot 2, consisting of the particulars set forth in the second part of the same schedule, and being of the estimated value of two equal ninth parts of the whole, should be taken by the said A. B. as her share; 3rdly, that Lot 3, consisting of the particulars set forth in the third part of the same schedule, and being also of the estimated value of two equal ninth parts of the whole, should be taken by the said C. B. as his share, and, 4thly, that Lot 4, consisting of the particulars set forth in the fourth part of the same schedule, and being also of the estimated value of two equal ninth parts of the whole, should be taken by the said D. B. as his share: And whereas in pursuance of the said agreement Lot 1 has been retained by the said E. B., and Lots 2, 3, and 4, have been made over to the said A. B., C. B., and D. B., respectively, in the manner mentioned in the said second schedule as they do hereby respectively acknowledge: And whereas the said A. B., C. B., and D. B., have examined the accounts of the said E. B. as such administratrix as aforesaid, and are satisfied therewith, and in testimony thereof have agreed to give to her this release: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B., C. B., and D. B., hereby release the said E. B. from all actions, claims, and demands whatsoever in relation to the estate and effects of the said X. B., deceased.

In witness, &c.

BY NEXT OF KIN TO ADMINISTRATOR.

The First Schedule above referred to.

Particulars of the Residuary Estate.

1. A leasehold house, being No. 2, —— Street, in the County of Middlesex, held for the unexpired residue of a term of 60 years computed from the —— day of ——, at the yearly rent of £——.
2. The household furniture and effects in the said house.
3. A sum of £——, debenture stock of the —— Railway Company.
4. A sum of £—— invested on mortgage of freehold hereditaments at ——.
5. A sum of £—— cash.

The Second Schedule above referred to

(*Showing the distribution of the above*).

Part 1. (*E. B.'s share*).

The said leasehold house and the household furniture and effects in and about the same.

The sum of £—— cash.

Part 2. (*A. B.'s share*).

The sum of £—— (part of the above-mentioned sum of £——), debenture stock of the —— Railway Company. This has been transferred to the said A. B. by a deed bearing even date with these presents.

The sum of £—— cash. This has been paid to the said A. B. by the said E. B.

Part 3. (*C. B.'s share*).

The above-mentioned sum of £—— secured by mortgage. This mortgage has been transferred to the said C. B. by a deed bearing even date herewith (*a*).

(*a*) This transfer will be in the usual form; the introductory recital (after reciting the death of the intestate and the administration taken out by E. B.) will be as follows: "And whereas upon the distribution of the residuary estate of the said X. B., deceased, it was arranged that the said C. B. should take the said principal sum of £—— secured by the said indenture of mortgage as part of his share thereof."

BY NEXT OF KIN TO ADMINISTRATOR.

Part 4. (D. B.'s share).

The sum of £—— (residue of the above-mentioned sum of £——), debenture stock of the —— Railway Company. This has been transferred to the said D. B. by a deed bearing even date herewith.

The sum of £—— cash. This has been paid to the said D. B. by the said E. B.

No. V.

BY NEXT OF KIN OF LEASEHOLDS.

RELEASE *by the* NEXT OF KIN *of an* INTESTATE *to the* ADMINISTRATRIX *of a* LEASEHOLD HOUSE *allotted to her on the* DISTRIBUTION *of the estate (to accompany the last Precedent).*

Parties.

Recital of lease, and death of lessee intestate, and grant of administration,

that debts have been paid.

Agreement that widow should take leasehold house as part of her distributive share.

THIS INDENTURE, made, &c. (*parties the same as last Precedent*): WHEREAS by an indenture of lease, &c. (*recite lease to X. B. the intestate*): AND WHEREAS the said X. B., &c. (*recite death of intestate leaving widow and children—and administration granted to widow, as in last precedent*): AND WHEREAS all the debts and funeral and testamentary expenses of the said X. B., deceased, have been paid and satisfied as the said E. B. doth hereby declare: AND WHEREAS it is part of the arrangement for the distribution of the residuary estate of the said X. B. that the said C. B. shall take the said leasehold messuage and premises as part of her share thereof: NOW THIS INDENTURE WITNESSETH that in pursuance of the said arrangement the said A. B., C. B., and D. B., hereby release unto the said E. B., THE messuage or tenement and premises comprised in and demised by the said indenture of lease, To the end and intent that the same shall belong to the said C. B. beneficially for and during the residue of the term granted therein by the said indenture, subject to the rent thereby reserved and to the lessee's covenants therein, but freed and discharged from all claims and demands whatsoever of them the said releasing persons respectively in and to the same by virtue of the statutes for the distribution of the effects of intestates or otherwise.

Children release to widow leasehold house.

IN WITNESS, &c.

No. VI.

RELEASE *by* Residuary Legatees *to* Executors, *where the residue is not given in trust* (*a very short form*).

BY RESIDUARY LEGATEES. (*Short Form.*)

KNOW ALL MEN BY THESE PRESENTS that we A. B., of, &c., and C. D., of, &c., being the residuary legatees under the will of X. Y., late of, &c., who died on the —— day of ——, 18—, have examined the accounts of the estate and effects of the said testator and of the administration thereof produced to us by E. F. of, &c., and G. H., of, &c., the executors of the said will, and have signed the same as found by us to be correct, and we admit that the sum of £——, being the balance appearing by the said accounts to be due to us as residuary legatees has been duly paid to us [*or* we admit that the money, stocks, funds and securities, the particulars whereof are set forth in the schedule hereto, represent the whole residuary estate of the said testator, and that the same have been duly distributed and divided among us as stated in the said schedule]: And we release the said E. F. and G. H. from all actions, claims, and demands whatsoever in relation to the estate and effects of the said testator.

Admission by residuary legatees that they have examined accounts and received balance due to them.

Release.

In witness, &c.

No. VII.

RELEASE *by the* Cestuis que Trust *and those claiming under them to the* Trustees *of a* Settlement *on the* Distribution *of the* Trust Funds.

RELEASE TO TRUSTEES OF SETTLEMENT.

THIS INDENTURE, made the —— day of ——, 18—, between A. B., of, &c. (*one releasor*), of the first part, C. B., of, &c. (*another releasor*), of the second part, G. H., of, &c., and I. K., of, &c. (*other releasors*), of the third part, D. E., of, &c., and F., his wife (*other releasors*), of the fourth part, and L. M., of, &c., and N. O., of, &c. (*trustees*), of the fifth part. Whereas, by an indenture dated, &c., and made between X. B., of the first part, Y. Z., of the second part, and (*trustees*), of

Parties.

Recital of marriage settlement of parents.

the third part (being the settlement made on the marriage of the said X. B. and Y. Z.), it was declared that the said (*trustees*) their executors, administrators, and assigns, should stand possessed of, &c. (*trust funds*): UPON trust, &c. (*usual trusts for children as parents or survivor should appoint, and in default of appointment equally, &c., hotchpot clause*):

That there have been three children of marriage.

AND WHEREAS there have been issue of the said marriage two sons and one daughter, namely, the said A. B., C. B., and F. E., who have all attained the age of twenty-one years, and two other children who died under that age and unmarried:

Marriage of daughter and appointment to her, and settlement of the share so appointed.

AND WHEREAS the said F. E., then F. B., intermarried with the said D. E. in the month of ——, 18—. And in contemplation of the said marriage by a deed poll under the hands and seals of the said X. B., and Y., his wife, dated, &c., the said X. B. and Y., his wife, in exercise of their said power in that behalf, appointed, &c. (*appointment of one-third of trust funds to F. E.*): AND by an indenture dated, &c. and made, &c. (being the settlement made on the marriage of the said D. E. and F. E., his wife), the said one-third share appointed to the said F. E. as last aforesaid was assigned unto the said G. H. and I. K., their executors, administrators, and assigns, upon the trusts therein declared concerning the same (*If the deed contains a receipt clause, recite it here*):

Deaths of father and mother.

AND WHEREAS the said X. B. died on the —— day of ——, 18—, and the said Y. B. died on the —— day of ——, 18—, without having made any appointment of the said trust funds except as aforesaid:

Appointment of new trustees.

AND WHEREAS the said L. M. and N. O. are the present trustees of the said indenture of settlement of the —— day of ——, having been appointed trustees thereof by an indenture dated, &c., and endorsed on the said indenture of settlement:

Present state of trust funds.

(*Recite the various changes of investment, tracing the trust funds to their present state of investment, and showing that they are now represented by £—— consolidated £3 per cent. annuities, and £—— invested in mortgage* (*a*)):

Bequest by beneficiaries to trustees to distribute.

AND WHEREAS the several persons parties hereto of the first four parts have requested the said L. M. and N. O. as the trustees of the said

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(*a*) If the dealings with the trust funds have been complicated, it will be convenient to trace the history and state the present investments in schedules, in which case the recitals may be as follows: "And whereas the trust funds settled by the said indenture of settlement have been from time to time dealt with as in the first schedule hereto is set forth, and the same are now represented by the particulars set forth in the second schedule hereto."

RELEASE TO TRUSTEES OF SETTLEMENT.

indenture of settlement to distribute the said trust funds among them in the manner hereinafter expressed: AND WHEREAS, in compliance with such request, the said L. M. and N. O. lately sold the said sum of £—— Consolidated £3 per Cent. Annuities, and by such sale realised the sum of £——, and they have also called in the said sum of £—— invested on mortgage security as aforesaid, and the said sums of £—— and £—— made together the sum of £——, out of which sum the said trustees have paid the sum of £—— for succession duty and for the expenses incidental to the winding up of the trust, leaving the sum of £——: AND WHEREAS the said L. M. and N. O. have paid the sum of £—— (being one-third part of the said sum of £——) to the said A. B., the like sum of £—— (being one other third part thereof) to the said C. B., and the sum of £—— (being the remaining one-third part thereof) to the said G. H. and I. K. as the trustees of the said indenture of the —— day of ——, with the consent of the said D. E. and F., his wife, as the said several persons parties hereto of the first four parts do hereby acknowledge: AND WHEREAS all the income which has been received in respect of the trust funds since the decease of the said Y. B. has been divided between the persons entitled thereto as aforesaid as the parties hereto of the first four parts do hereby also acknowledge. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the several persons parties hereto of the first four parts respectively hereby release the said L. M. and N. O., and each of them, and the former trustees of the said indenture of settlement of the —— day of —— and every of them from all actions, claims, and demands whatsoever, for or on account or in respect of the several trust funds and premises settled by the said indenture or the trust funds for the time being representing the same or the income thereof respectively, or for or on account or in respect of any act, deed, matter, or thing whatsoever, done or omitted to be done by the said L. M. and N. O., or either of them, or any former trustee or trustees of the same indenture, in or about the execution of the trusts and powers of the same indenture, or in anywise relating thereto.

Sale and calling in of trust funds, and payment of succession duty and expenses.

Distribution of residue.

That income has been duly paid.

Witnessing part.

Release.

IN WITNESS, &c.

No. VIII.

RELEASE AND INDEMNITY TO RETIRING TRUSTEES.

RELEASE *and* INDEMNITY *by* CESTUIS QUE TRUST TO *retiring Trustees on the* APPOINTMENT *of* NEW TRUSTEES *of a* SETTLEMENT (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. his wife (*cestui que trust*), of the first part, D. B., of, &c., E. B., of, &c., and F. B., of, &c. (*other cestuis que trust*), of the second part, and G. H., of, &c., and I. K., of, &c. (*retiring trustees*), of the third part (*Recite settlement under which G. H. and I. K. were trustees, and containing the usual trusts for husband and wife successively, and then for their children—power to appoint new trustees*): AND WHEREAS there have been issue of the said marriage three children, viz., the said D. B., E. B., and F. B., who have all attained the age of twenty-one years, and two others who died under that age and unmarried: AND WHEREAS the said G. H. and I. K., being desirous of being discharged from the trusts of the said indenture of settlement, L. M., of, &c., and N. O., of, &c., have been appointed trustees in their place by an indenture bearing even date with these presents: AND WHEREAS there have been several changes of investments of the trust funds settled by the said indenture, and the same now consist of or are represented by the following particulars, namely (*state particulars of investments*): AND WHEREAS some of the said investments are not in strict accordance with the trusts of the said indenture, but the same were made at the request of the said A. B. and C. his wife, and are approved of by the said D. B., E. B., and F. B.: AND WHEREAS

Recite settlement.

Issue of marriage.

Retirement of old trustees and appointment of new trustees.

Dealings with trust funds.

That some of the investments are not authorised.

Cases in which retiring trustees are entitled to a release.

(*a*) Retiring trustees are not, as a general rule, entitled to a release from the cestuis que trust, but sometimes it is expressly stipulated that they shall have one, as where the dealings with the trust funds have not been regular, and the irregularities have been committed at the instance of the cestuis que trust, who are *sui juris*. Again, if besides the appointment of new trustees, some alteration is made in the trusts with the consent of the beneficiaries, such an arrangement may properly be treated as a winding up of the old trust, and the creation of a new one, and it would be proper to give the retiring trustees a release. An instance of such a case is, where the trustees of a settlement of real estate have made sales and purchases and interim investments, involving the keeping of accounts. If there is a resettlement of the estate on the eldest son coming of age, the accounts should be submitted to him and his father, and a release given to the trustees.

RELEASE AND INDEMNITY TO RETIRING TRUSTEES.

the income of the trust funds has been duly and regularly paid to the said A. B. up to the date of these presents : AND WHEREAS it was part of the arrangement, on the retirement of the said G. H. and I. K. from the trusts of the said indenture, that such release and covenant for indemnity should be given to and entered into with them as are hereinafter expressed : NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said A. B. and C. his wife, D. B., E. B., and F. B., hereby release the said G. H. and I. K., and each of them of and from all actions, claims, and demands whatsoever, for or on account or in respect of the trust funds and premises settled by the said indenture, and the trust funds from time to time representing the same, or the income thereof respectively, or for or on account or in respect of any act, deed, matter, or thing whatsoever, done or omitted to be done by the said G. H. and I. K., or either of them, in or about the execution of the trusts and powers of the said indenture, or in anywise relating thereto, and in particular for or on account of some of the investments of the said trust funds not being authorised by the said indenture : AND the said A. B., D. B., E. B., and F. B. hereby jointly and severally covenant with the said G. H. and I. K., that they the said covenanting persons will at all times keep indemnified the said G. H. and I. K., and each of them, from and against all actions, claims, and demands whatsoever, which may be instituted against them or either of them by or on behalf of the said C. B. or any other person whomsoever, for or on account of any act, deed, matter, or thing whatsoever, done or omitted to be done by the said G. H. and I. K., or either of them, in or about the execution of the trusts and powers of the said indenture, or in anywise relating thereto, and in particular for or on account of such unauthorised investments having been made as aforesaid.

Payment of income.

Agreement for release and indemnity.

Witnessing part.

Release by father and mother and children to retiring trustees.

Covenant by father and children to indemnify retiring trustees against any claims by mother.

IN WITNESS, &c.

No. IX.

RECEIPT FOR LEGACY.

RECEIPT *for a* LEGACY *charged on* LAND (*a*).

Legatee acknowledges payment of legacy.

I, A. B., of, &c., to whom a legacy of £—— is given by the will of X. Y., late of, &c., who died on the —— day of ——, 18—, and is thereby charged on the testator's real estate, hereby acknowledge and declare that I have received the said legacy of £—— from C. D., of, &c., the devisee of the said real estate, all interest thereon having been first duly paid.

(Signed) A. B.

No. X.

RELEASE OF LANDS FROM LEGACY.

RELEASE *of* LANDS *from a* LEGACY *charged thereupon by will.*

Parties.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c. (*releasor*), SENDS GREETING: WHEREAS S. H., late of, &c., by his will, dated the —— day of ——, gave and bequeathed the sum of £5000 to the said A. B., and directed that the same should be charged on, and be payable primarily out of his real estate, and the said testator by his said will, gave and devised all his real estate so charged as aforesaid unto the said C. D., (*Death of testator and probate of will*): AND WHEREAS the said legacy of £—— has not been paid: AND WHEREAS the said C. D., being about to sell the hereditaments described in the schedule hereto, being part of the testator's real estate, has requested the said A. B. to release

Recite bequest of legacy and devise of lands charged therewith.

Death of testator and probate of will.

Agreement to release.

Cases in which a purchaser of real estate charged with legacies is bound to see to their payment.

(*a*) If real estate is devised to A. charged with debts and legacies, A. can make a good title to a purchaser, and the latter is not bound to make any enquiry as to the application of the money. But if the real estate is charged with a legacy or several legacies and not with debts, it is apprehended that in cases not coming within sections 14, 15 & 16 of 22 & 23 Vict. c. 35, the devisee cannot make a good title without proving payment or a release. If the legacy is paid a simple receipt is sufficient, but if it is released without payment there should be a formal deed. Forms of both are given in the text.

the same from the said legacy, which he the said A. B. has agreed to do, being satisfied that the other real estate is of ample value as a security for the said legacy: NOW THESE PRESENTS WITNESS, that in consideration of the premises, THE said A. B. hereby releases the hereditaments described in the schedule hereto from the said legacy of £——, and all interest thereon and all claims and demands for or in respect of the same.

Release of lands from legacy.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XI.

RELEASE *by* EXECUTORS *to* DEVISEE *of* REAL ESTATE *charged with* DEBTS *and* LEGACIES.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., and C. D., of, &c. (*executors*), SEND GREETING (*Recite will whereby real estate is given to E. F., charged with debts and legacies in aid of the personal estate, death of testator, and probate of his will*): AND WHEREAS all the funeral and testamentary expenses and debts of the said testator, and all the legacies given by his said will have been paid and satisfied out of his personal estate as they the said A. B. and C. D. as such executors as aforesaid do hereby acknowledge, and they have therefore agreed to execute this release: NOW THESE PRESENTS WITNESS that the said A. B. and C. D. as such executors as aforesaid hereby release all the real estate of the said X. Y., deceased, from all claims and demands for or in respect of the funeral and testamentary expenses and debts of the said testator, and the legacies given by his said will or any of them or any part thereof respectively.

Recital that debts and legacies have been paid out of personalty.

Executors release real estate.

IN WITNESS, &c.

No. XII.

RELEASE OF RIGHT TO DOWER.

RELEASE *of* WIFE'S *right to* DOWER, *in respect of all the* REAL ESTATE *to which her* HUSBAND *was entitled at his* DECEASE.

Recite will of testator.

That widow is entitled to dower.

Witnessing part.

Release of right to power.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., widow (*releasor*), SENDS GREETING: WHEREAS C. B., late of, &c., died intestate, on the —— day of ——, 18—, leaving the said A. B., his widow, and E. F., his only son and heir at law: AND WHEREAS the said C. B. was at his death seised of freehold lands and hereditaments out of which the said A. B., his widow, is entitled to dower: AND WHEREAS the said A. B. has, at the request of the said E. F., agreed to release the said lands and hereditaments from her dower in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said A. B., in consideration of her natural love and affection for the said E. F., hereby releases ALL the lands and hereditaments of or to which the said C. B. was seised or entitled at his decease, of and from all the right and title to dower of her the said A. B., out of or in respect of the same, and all claims and demands relating thereto.

IN WITNESS, &c.

No. XIII.

RELEASE OF POWER.

RELEASE *of a* POWER *of* REVOCATION *and* NEW APPOINTMENT *contained in a* VOLUNTARY SETTLEMENT (*a*).

Recite settlement.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c. (*releasor*), SENDS GREETING (*Recite settle-*

Different kinds of powers.

(*a*) Powers are distinguished as follows: 1. Appendant or appurtenant; 2. Collateral or in gross; 3. Simply collateral. Lord St. Leonards defines powers appendant or appurtenant as powers which strictly depend on the estate limited to the person to whom they are given; powers collateral or in gross, as powers given to a person who had an interest in the estate at the execution of the deed creating the power, or to whom an estate is given

RELEASE OF POWER

ment whereby lands were conveyed by A. B. to use of A. B. for life, with remainder to C. B. his wife for life, with remainder to use of the children of A. B. and C. B. as tenants in common in fee simple, with power to A. B. to revoke the use and appoint the property to other uses): AND WHEREAS the said C. B. died on the —— day of ——: AND WHEREAS there have been two children of the said A. B. and C. his wife, namely, D. B. and E. B., both of whom have attained the age of twenty-one years: AND WHEREAS the said A. B. has not exercised the power of revocation and new appointment reserved to him by the said indenture of settlement, and he has now agreed to release the same in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said A. B., hereby releases unto the said D. B. and E. B., and all other persons interested in the hereditaments comprised in the said indenture of settlement, the said power of revocation and new appointment reserved to the said A. B. in and by the said indenture as aforesaid, To the end and intent that the same hereditaments shall absolutely remain and be to the uses declared by the said indenture, freed and discharged from the said power of revocation and new appointment.

Death of settlor's wife.

That there are two children.

That settlor is desirous to release power of revocation.

Witnessing part.

Release of power.

IN WITNESS, &c.

No. XIV.

RELEASE *of* ACTIONS *on* PAYMENT *of* COSTS.

RELEASE OF ACTIONS ON PAYMENT OF COSTS.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c. (*releasor*), SENDS GREETING: WHEREAS two

Recite that

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by the deed, but which enable him to create such estate only as will not attach on the *interest* limited to him; and a power *simply* collateral, as a power to a person not having any interest in the land, and to whom no estate is given, to dispose of or charge the estate in favour of some other person. A power simply collateral could not until the recent Act have been extinguished or released (Sug. Pow. 7th Edition, pp. 39 to 45), but it is now provided by the Conveyancing Act, 1881, sect. 52, that a person to whom any power, whether coupled with an interest or not, is given, may by deed, release, or contract not to exercise the same, and this enactment applies to powers created by instruments coming into operation either before or after the commencement of the Act.

Powers simply collateral may now be released.

actions had been commenced by releasor on account of libels.

Agreement to accept a sum in satisfaction of damage occasioned by the libels.

Release of actions, &c., on account of libels;

and agreement to determine actions.

several actions have lately been commenced by the said A. B. in the High Court of Justice (Queen's Bench Division) against C. D., of, &c., and E. F., of, &c., for the printing and publication of certain libels against him the said A. B.: And whereas it hath been agreed between the parties to these presents, that the said C. D. and E. F. should pay to the said A. B. the sum of £—— for and in full satisfaction of all damages and costs suffered and incurred by the said A. B. on account of the said libels, and in and about the prosecution of the said actions, and that upon payment of the said sum of £——, the said actions and all further proceedings therein shall be wholly stayed and discontinued: NOW THEREFORE KNOW YE, and these presents witness, that in consideration of the said sum of £—— so paid to the said A. B. by the said C. D. and E. F. in full satisfaction as aforesaid, the receipt whereof is hereby acknowledged, the said A. B. doth hereby release, and quit claim unto the said C. D. and E. F., and each of them, All and all manner of actions, causes of action, claims and demands whatsoever, which he the said A. B. now hath, or at any time hereafter can or may have, or, but for the execution of these presents, could or might have had against the said C. D. and E. F., or either of them, for or by reason or in respect of any matter or thing contained in the said libels as aforesaid, or or or by reason of any other matter or thing in anywise relating thereto: And the said A. B. doth hereby consent and agree that the said actions shall henceforth cease and be determined.

In witness, &c.

No. XV.

RELEASE *and* INDEMNITY *from Pecuniary* LEGATEES *to* EXECUTORS, *who pay the* LEGACIES *after the withdrawal of a* CAVEAT *which has been entered by some of the* NEXT *of* KIN *for impeaching the* WILL.

FROM LEGATEES TO EXECUTORS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN S. B., of, &c., W. B., of, &c., J. G., of, &c., and R., his wife, J. M., of, &c., and M., his wife, E. P., of, &c., and S., his wife, and M. J. B., of, &c. (*releasors*), of the first part, and W. X., of, &c., and Y. Z., of, &c. (*releasees*), of the second part; WHEREAS R. B., late of ——, in the county of ——, spinster, deceased, made her will dated the —— day of ——, 18—, and thereby bequeathed to the said S. B., W. B., R. G., M. M., S. P., and M. J. B., a legacy of £100 sterling each, and to the said W. X. and Y. Z., £50 sterling each, and directed the legacy duty on all the said legacies to be paid out of her estate, and she thereby appointed the said W. X. and Y. Z. executors of her said will: AND WHEREAS the said R. B. died on the —— day of ——, 18—: AND WHEREAS a caveat against the said will was soon afterwards entered in the principal probate registry by the said S. B., W. B., and R. G. (three of the next of kin of the said R. B.), for the purpose of impeaching and setting aside the said will, on the ground of incompetence and undue influence: AND WHEREAS the said S. B., W. B., and R. G. have since withdrawn their said caveat and abandoned all proceedings for impeaching and setting aside the said will, and the same was accordingly, on or about the —— day of —— duly proved by the said W. X. and Y. Z. in the principal probate registry: AND WHEREAS, notwithstanding the said W. X. and Y. Z. are fully satisfied of the validity of the said will of the said R. B., and of her mental competency and freedom from undue influence in relation thereto, yet inasmuch as the abandonment of proceedings for impeaching the same, and the grant of probate thereof in manner aforesaid, may nevertheless not prevent the same being hereafter called in question by the next of kin of the said R. B., or some of them, and in consequence thereof the said W. X.

Recite will of testatrix.

Death of testatrix.

Entry of caveat.

Withdrawal of caveat, and probate of will.

Agreement by parties of first part to execute release, and give indemnity.

and Y. Z. have hesitated to act in the trusts of the said will and to pay the several legacies thereby bequeathed and the duty thereon, without an indemnity from the legatees, and the said several parties hereto of the first part have accordingly, for the greater satisfaction of the said W. X. and Y. Z., and as an inducement to them to act in the trusts of the said will, and to pay the said legacies and legacy duty, agreed, in consideration thereof, to execute such release, and to enter into such covenants as are hereinafter contained: And whereas the said W. X. and Y. Z. have accordingly paid the legacy duty on all the said legacies bequeathed by the said recited will of the said R. B., and have immediately before the execution of these presents retained their own said several legacies of £50 each, and paid to the said S. B., W. B., R. G., M. M., S. P., and M. J. B., their said several legacies of £100 each, as they the said several persons parties hereto of the first part do hereby respectively acknowledge, the said legacies to the said R. G., M. M., and S. P., being so paid to them respectively with the privity and by the desire of their said husbands respectively, as they the said J. G., J. M., and E. P., also hereby admit: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, they the said several persons parties hereto of the first part do, and every of them doth hereby release and discharge the said W. X. and Y. Z., and each of them, and the estate and effects of the said R. B. from the said several legacies of £100 each by the said will bequeathed as aforesaid, and from all actions, claims, and demands whatsoever, for or in respect of the same legacies respectively, and also from all actions, claims, and demands whatsoever, for or on account of any distributive share, or other interest whatsoever in the estate and effects of the said R. B., either under the statutes for the distribution of the estates of intestates, or otherwise howsoever, or for or on account of any matter or thing whatsoever in anywise relating to the premises, or any of them: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, they the said S. B., W. B., J. G., J. M., E. P., and M. J. B., and every combination of them, do hereby jointly and severally covenant with the said W. X. and Y. Z., that the said several persons parties hereto of the first part, or any of them, or other the person or persons

Payment of legacy duty and legacies.

Release by parties of first part to executors of will.

Covenants of indemnity to executors of the will.

FROM LEGATEES TO EXECUTORS.

who, in the event of the said R. B. having died intestate, would have been entitled to his estate and effects, or to any part or share thereof, or any person or persons claiming under the several persons aforesaid, or any of them, shall not nor will, at any time or times hereafter, commence or prosecute any action, or other proceeding whatsoever, for the purpose of impeaching or setting aside the said recited will of the said R. B., AND FURTHER THAT they the said several parties hereto of the first part, or some or one of them, or the heirs, executors, or administrators of them or some or one of them, shall and will from time to time, and at all times hereafter, save harmless and keep indemnified the said W. X. and Y. Z., and each of them, and their and each of their, estates and effects, from and against all costs, charges, damages, and expenses whatsoever, for or by reason or on account of the said W. X. and Y. Z., or either of them, having acted in the trusts of the said will, and particularly for or by reason or on account of their having paid the said several legacies of £100 each to the said S. B., W. B., R. G., M. M., S. P., and M. J. B., or any of them, or the legacy duty thereon respectively, or for or by reason or on account of any action, or other proceeding that may be commenced, carried on, or prosecuted for impeaching or setting aside the said will, or calling in question the propriety of the payment of the said several legacies and legacy duty, or any of them, or for or by reason or on account of any other matter or thing in anywise relating to the premises, or any of them.

IN WITNESS, &c.

No. XVI.

DEMISE *of a* PORTION *of certain* LANDS *charged with an* ANNUITY *to* TRUSTEES *for* A TERM OF YEARS *upon trust by way of* INDEMNITY *and* EXONERATION *of the* REMAINDER *of such lands from the payment thereof.*

DEMISE OF LANDS BY WAY OF INDEMNITY AGAINST RENT-CHARGE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*owner*), of the one part, and C. D., of, &c., and E. F., of, &c. (*trustees*), of the other part: WHEREAS I. K., late of ——, deceased, duly made his will, dated the —— day of ——,

Recite will charging annual sum on lands.

DEMISE OF LANDS BY WAY OF INDEMNITY AGAINST RENT-CHARGE.

That lands charged are comprised in schedules.

Demise of lands in first schedule to trustees for a term of years.

Upon trust to indemnify lands in second schedule from annual sum.

And for that purpose to raise money by sale or mortgage, or otherwise.

and thereby devised all his hereditaments situate in the county of —— unto the said A. B., his heirs and assigns, charged with the payment of the annual sum of £—— to M. N. during her life (*Death of A. B. and probate of his will*): And whereas the hereditaments devised by the said will consist of the particulars mentioned and set forth in the first and second schedules hereto: And whereas the annual value of the hereditaments comprised in the first schedule hereto considerably exceeds the annual sum of £——; And whereas the said A. B. has agreed to sell some of the hereditaments comprised in the second schedule hereto, and intends shortly to sell the residue of the same hereditaments, and in order to facilitate such sales he is desirous of charging the said annual sum of £—— exclusively on the hereditaments comprised in the first schedule hereto, and in exoneration of the hereditaments comprised in the second schedule: NOW THIS INDENTURE WITNESSETH, that the said A. B., as beneficial owner, hereby demises unto the said C. D. and E. F., All the hereditaments mentioned and described in the first schedule hereto: To hold the same unto the said C. D. and E. F., for the term of one thousand years, to be computed from the date of these presents, without impeachment of waste, upon the trusts following (that is to say), Upon trust and to the intent that the hereditaments hereby demised and the rents and profits thereof, shall be at all times henceforth an indemnity to the hereditaments comprised in the second schedule hereto, and every part thereof, and to the several purchasers and proprietors thereof, and of every part thereof, from and against the said annuity of £——, and all claims and demands in respect thereof; And upon trust that in case any entry, distress, claim, or demand, shall at any time hereafter be made for or on account of the said annuity, or any part thereof, upon the hereditaments comprised in the second schedule hereto, or the rents and profits thereof, or any part thereof respectively, or upon the person or persons for the time being entitled to the same, or his or their tenants, or any of them, then and in every such case the said C. D. and E. F., or the survivor of them, or other the trustees or trustee for the time being of the said term, shall out of the rents and profits of the hereditaments hereby demised, or any part thereof, or by selling, mortgaging, or leasing the same, for all or any part of the said term, or by any other reasonable ways

DEMISE OF LANDS BY WAY OF INDEMNITY AGAINST RENT-CHARGE.

or means, raise such sum or sums as shall or may be required for the purpose of paying and discharging the said annuity, or such part thereof as shall be in arrear and unpaid, and all costs, damages, and expenses, which may be sustained or incurred by reason of any such entry, distress, claim, or demand as aforesaid, and all such other costs and expenses as may be incurred in the execution of the trusts and provisions of these presents, and shall apply the moneys to be so raised as aforesaid accordingly: AND UPON FURTHER TRUST that, subject and without prejudice to the trusts hereinbefore declared, the said trustees or trustee shall permit the rents and profits of the said hereditaments hereby demised, to be received by the said A. B., his heirs or assigns, or other the person or persons for the time being entitled to the same hereditaments in reversion immediately expectant on the said term of one thousand years: AND IT IS HEREBY declared, that the power of appointing new trustees conferred by statute shall apply to these presents.

Statutory power to appoint new trustees to apply.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. XVII.

DECLARATION OF TRUST OF STOCK BY WAY OF INDEMNITY.

DECLARATION *of* TRUST *of a* SUM *of* STOCK *invested in the names of* TRUSTEES *by way of* INDEMNITY *against a* SUM *of* MONEY *charged on* LANDS *which have been* SOLD *to several* PURCHASERS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor of lands*), of the one part, and C. D., of, &c., and E. F., of, &c. (*trustees*), of the other part (*Recitals showing that under a settlement and disentailing assurance in the events which happened A. B. became absolutely seised in fee simple of lands subject to a sum of £—— charged thereon for the portions of his younger brothers and sisters*): AND WHEREAS the said A. B. has lately sold the hereditaments comprised in the said recited indenture of settlement to several persons, and the particulars of the said several sales and the names of the several purchasers are set forth in the schedule hereto: AND WHEREAS on the treaty for the said several sales it was stipulated and agreed that the sum of £—— should be invested by the said A. B. in the names of trustees, to be held by them upon the trusts hereinafter declared concerning the same: AND WHEREAS in pursuance of the said agreement the said A. B. has invested the sum of £—— in the purchase, in the names of the said C. D. and E. F., of the sum of £—— consolidated £3 per Cent. Annuities: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration of the premises, IT IS HEREBY AGREED AND DECLARED that the said C. D. and E. F. (hereinafter called "the trustees") shall stand possessed of the said sum of £—— consolidated £3 per Cent. Annuities (hereinafter called "the said trust stock"), upon the trusts following (that is to say), UPON TRUST that the trustees shall, when and so soon as the said sum of £—— by the said indenture of settlement charged on the hereditaments therein comprised for portions as aforesaid, or any part or parts thereof, shall become payable, raise the same sum of £——, or such part or parts thereof as shall from time to time become pay-

Recite settlement, &c.

Sales of land comprised in settlement.

Agreement for indemnity.

Purchase of consols in the names of trustees.

Witnessing part.

Declaration of trust of consols.

Upon trust to apply same in payment of portions in exoneration of settled lands.

able as aforesaid, and all interest (if any) which shall become due in respect thereof, by the sale of a competent part of the said trust stock, and shall apply the moneys to be so raised as aforesaid accordingly, TO THE END and intent that the hereditaments comprised in the said indenture of settlement, and the several purchasers of the same respectively, and all other persons for the time being entitled to or interested in the same, shall and may at all times hereafter be exonerated and discharged of and from the payment of the said sum of £—— charged on the said hereditaments for portions as aforesaid and every part thereof, and may be indemnified against the same sum and every part thereof, and all claims and demands for or in respect of the same, with and by means of the said trust stock, and the proceeds of the sale thereof, AND SUBJECT to the trust aforesaid, do and shall stand possessed of the said trust stock, IN TRUST for the said A. B., absolutely, and so that until the said sum of £—— shall become raisable for portions as aforesaid, the dividends of the said trust stock, or of such part thereof as shall not for the time being have become saleable under the trust aforesaid shall be paid to the said A. B.

DECLARATION OF TRUST OF STOCK BY WAY OF INDEMNITY.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XVIII.

DECLARATION *of* TRUST *of purchase-money of* NEXT PRESENTATION *to a* VICARAGE, *by way of* INDEMNITY *to purchaser against possible* DEFECT *of* TITLE, *the same* NOT *having been fully* INVESTIGATED *to save expense.*

TRUST OF PURCHASE-MONEY AS INDEMNITY AGAINST DEFECT OF TITLE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*purchaser*), of the second part, and E. F., of, &c., and G. H., of, &c. (*trustees*), of the third part (*Recite indenture of even date, being a grant of*

Parties.

Recite grant of next presentation.

TRUST OF PURCHASE-MONEY AS INDEMNITY AGAINST DEFECT OF TITLE.

Agreement for indemnity.

the next presentation by A. B. to C. D.) : AND WHEREAS the Rev. —— is the present incumbent of the said vicarage: AND WHEREAS, in order to save expense, the title of the said A. B. to the said next presentation has not been investigated by or on the part of the said C. D. as fully as he was entitled to investigate the same, and it has been therefore agreed that in order to indemnify the said C. D. from any adverse claim which may hereafter be made to the said next presentation, the whole of the said purchase-money of £1500, instead of being paid to the said A. B. as is expressed in the said indenture, shall be paid to the said E. F. and G. H., to be held by them upon the trusts hereinafter declared concerning the same, and the same has been so paid accordingly, as they the said E. F. and G. H. do hereby acknowledge, AND it has also been agreed that the said A. B. shall enter into such covenant as is hereinafter on his part contained: NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the premises, IT IS HEREBY AGREED AND DECLARED that the said E. F. and G. H. (hereinafter called the trustees), shall with the consent in writing of the said C. D. and A. B. or their respective executors, administrators, or assigns invest the said sum of £1500 in the names of the trustees in or upon any of the parliamentary stocks or public funds of the United Kingdom, or upon government or real securities in England or Wales (but not in Ireland), and from time to time, or at any time with the like consent, vary such investment into or for others of the same or a like nature, AND shall permit the said A. B., his executors, administrators, or assigns, to receive the income of the said trust moneys, stocks, funds, and securities until the next avoidance of the said vicarage by the death, resignation or cession, of the said present incumbent, or by any other means whatsoever, AND from and after such next avoidance as aforesaid, do and shall retain in their or his hands or hand the income of the said trust premises during the space of six calendar months then next ensuing, or if any person shall in the meantime make any claim to the next presentation adversely to the claim or title of the said C. D., his executors, administrators, or assigns, and not derived from or under him or them, and an action of *quare impedit* or any other proceedings shall, at the expiration of such six calendar months, be pending in respect of

Witnessing part.

Declaration that trustees shall invest purchase-money.

In trust to pay income to vendor until vacancy

TRUST OF PURCHASE-MONEY AS INDEMNITY AGAINST DEFECT OF TITLE.

such adverse claim or claims, then until the release, abandonment, or final adjudication of the same: AND IT IS HEREBY AGREED AND DECLARED, that if the said C. D., his executors, administrators or assigns, shall, under any verdict or judgment in any such action or other proceedings or otherwise by reason of such adverse claim or title as aforesaid, be lawfully and rightfully deprived of the said next presentation without any neglect, connivance, or default on his or their part, then and in such case the trustees shall hold the said trust moneys, stocks, funds, and securities, together with the income which shall have been so retained by them or him as aforesaid, IN TRUST for the said C. D., his executors, administrators, or assigns, and shall transfer and pay the same to him or them accordingly; BUT if such case as last aforesaid shall not happen, then do and shall hold the said trust moneys, stocks, funds, and securities, and income, in trust for the said A. B., his executors, administrators, or assigns, for his or their absolute use and benefit, and shall transfer and pay the same respectively to him or them accordingly: AND THE SAID A. B. hereby covenants with the said C. D., that if the case shall happen in which the trustees are hereinbefore directed to hold the said trust premises in trust for the said C. D. his executors, administrators, or assigns, he the said A. B., his heirs, executors, administrators, or assigns, will repay unto the said C. D., his executors, administrators, or assigns, all such sums of money as shall in the meantime have been received by the said A. B., his executors, administrators, or assigns, for the income of the said trust premises under the trust in that behalf hereinbefore declared, and also all such costs, charges, and expenses as he the said C. D., his executors, administrators, or assigns, may have incurred or sustained in or about or in respect of the purchase of the said next presentation, or in or about the resisting of any such adverse claim or claims as aforesaid, or otherwise in relation to the premises: PROVIDED ALWAYS, and it is hereby agreed and declared, that nothing in these presents contained shall preclude the said C. D., his executors, administrators, or assigns, in case of his or their being so deprived of the said next presentation as aforesaid from instituting any action or other proceeding against the said A. B., or any other person whomsoever, upon the covenants for title contained

If purchaser shall be deprived of next presentation by an adverse claim, then in trust for purchaser;

but otherwise, in trust for vendor.

Covenant by vendor if purchaser is deprived, to repay interest and costs

Purchaser not to be precluded from suing on covenant for title.

TRUST OF PURCHASE-MONEY AS INDEMNITY AGAINST DEFECT OF TITLE.

[*or* implied by law] in the said indenture of even date herewith, or in any other deed affecting the said premises, but so, nevertheless, that in case the said C. D., his executors, administrators, or assigns, shall elect to institute any such action or other proceedings as last aforesaid, the damages (if any) recovered therein shall be accepted by him or them in full satisfaction for all benefit or advantage to which he or they would otherwise have been entitled under the trusts and covenants hereinbefore contained, and in such case the said trustees or trustee shall and do hold all the said trust moneys, stocks, funds, and securities, and the income thereof which shall have been so retained as aforesaid, IN TRUST, in the first place, for securing the payment of the full amount of the damages to be so recovered as aforesaid, and by way of collateral security for the same, and, subject thereto, IN TRUST for the said A. B., his executors, administrators, or assigns, absolutely: AND THE SAID C. D. hereby covenants with the said A. B., that if any adverse claim shall be made to the said next presentation, he the said C. D., his executors, administrators, or assigns, will immediately thereupon give information thereof to the said A. B., his executors or administrators; PROVIDED ALWAYS, and it is hereby agreed and declared, that if any adverse claim shall be made to the said next presentation, and the said A. B., his executors, or administrators, shall be desirous of bringing any action for compensation or damages against the original grantor of the said next presentation or his representatives by virtue of such grant, he the said A. B., his executors or administrators, shall be at liberty to use the name or names of the said C. D., his executors, administrators, or assigns in such action, he the said A. B., his executors, or administrators, indemnifying the said C. D., his executors, administrators, or assigns, from all costs, charges, and expenses, incurred or sustained thereby: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that if the said E. F., or any trustee appointed under this present power, shall die or go to reside abroad, or desire to retire from or refuse, or become incapable to act in the trusts of these presents, then and so often as the same shall happen it shall be lawful for the said A. B., his executors or administrators, to appoint a new trustee in the place of the trustees so dying or going to reside abroad, or desiring to retire,

Covenant by purchaser to give information to vendor of adverse claim.

Power to appoint new trustees.

TRUST OF PURCHASE-MONEY AS INDEMNITY AGAINST DEFECT OF TITLE.

or refusing or becoming incapable to act as aforesaid (*Similar power to C. D., his executors or administrators, to appoint a new trustee in the place of G. H., or any trustee succeeding him*): AND IT IS HEREBY DECLARED, that upon every such appointment as aforesaid the trust premises shall be so transferred as that the same may be effectually vested in the new trustee or trustees, either jointly with the continuing trustee or trustees, or solely as the case may require, and every such new trustee shall have all the powers and authorities of the trustee in whose place he shall be substituted.

IN WITNESS, &c.

No. XIX.

RELEASE *of* PART *of* LANDS *charged with a* RENT-CHARGE (*a*).

RELEASE OF PART OF LAND FROM RENT-CHARGE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*releasor*), of the one part, and C. D., of, &c. (*releasee*), of the other part (*Recite indenture under which "the hereditaments described in the schedule hereto, with other hereditaments," are charged with a rent-charge payable to A. B., and, subject to such rent-charge, are vested in C. D. in fee*): AND WHEREAS all the hereditaments comprised in the hereinbefore recited indenture still remain vested in the said C. D. in fee simple, as he doth hereby declare: AND WHEREAS the said C. D., being about to sell the hereditaments described in the schedule hereto, has applied to and requested the said A. B. to release the same from the said yearly rent-charge of £—— limited to him by the hereinbefore recited indenture as aforesaid, which the said A. B. has agreed to do, being satisfied that the

Recite that all the hereditaments subject to rent-charge remain vested in release.

Agreement to release.

(*a*) By the 22 & 23 Vict. c. 35, s. 10, it is provided that the release from a rent-charge of part of the hereditaments charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.

Rent-charge may be released as to a part of the property.

RELEASE OF PART OF LAND FROM RENT-CHARGE.

other hereditaments comprised in the same indenture are a sufficient security for the said rent-charge: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said A. B. hereby releases all and singular the lands and hereditaments described in the schedule hereto, of and from the said yearly rent-charge of £—— limited to the said A. B. by the hereinbefore recited indenture as aforesaid, and from all claims and demands whatsoever for or in respect of the same or any part thereof: PROVIDED ALWAYS, that the hereditaments comprised in the hereinbefore recited indenture other than the hereditaments hereby released, shall remain subject to the same yearly rent-charge, and the powers and remedies for enforcing payment thereof, as if these presents had not been executed.

Witnessing part.

Release of lands in schedule from rent-charge.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

PARTNERSHIP DEEDS.

What is a partnership.

Partnership is a contract whereby two or more persons engage together in some business or undertaking, bringing for this purpose into community capital or labour or both, and sharing the profits (*a*). The principal

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Participation in profits a *primâ facie* test of partnership, but not conclusive.

(*a*) Although participation in profits is a *primâ facie* test of partnership, it is not in every case conclusive, as there may be circumstances to rebut the inference of partnership, as where under a deed of arrangement between an insolvent firm and its creditors, trustees were directed to carry on the business under a new title for the benefit of the creditors until their debts were paid, it was held that the creditors were not partners, and the test was stated to be whether the trustees were carrying on the business as their agents, and the fact that they were not entitled to the profits to an indefinite extent but only until their debts were paid, was relied on as rebutting the presumption that they were the owners of the business standing in the relation of principals to the persons ostensibly carrying on the trade (Cox *v.* Hickman, 8 H. L. C. 268).

28 & 29 Vict. c. 86. Lender of money on terms that interest shall vary with profits, not a partner.

Nor a servant who receives a share of profits as remuneration.

Nor a widow or child of deceased partner, who receives share of profits by way of annuity.

Nor a vendor of business who receives a share of profits as consideration.

By the 28 & 29 Vict. c. 86, it is provided (sects. 1 and 2) that the advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such provision that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner with the person or persons carrying on such trade or undertaking or render him responsible as such; and that no contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall of itself render such servant or agent responsible as a partner therein, nor give him the rights of a partner, and the 3rd sect. provides that no person being the widow or child of a deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business shall by reason only of such receipt be deemed to be a partner of or to be subject to any liabilities incurred by such trader; and the 4th sect. declares that no person receiving by way of annuity or otherwise a portion of the profits of any business in consideration of the sale by him of the goodwill of such business, shall by reason only of such receipt be deemed to be a partner of or be subject to the liabilities of the person carrying on such business. By the 5th sect. it is provided that in the event of the trader being made a bankrupt or entering into an arrangement to pay his creditors less than 20*s*. in the pound, or dying insolvent, the lender shall not recover any part of his principal or of

Implied authority of each partner to bind the firm.

legal consequence of the contract is that, as regards third persons, each partner has authority to bind the firm in all matters coming within the ordinary scope of the business, and that the contracts and engagements of the firm may be enforced against every member of it. And where a person retires by agreement from a firm which continues to carry on business, his liability continues until the fact of his retirement is notified. A notice in the *London Gazette* is sufficient as against all persons who had no dealing with the old firm, but it is necessary to give express notice to old customers.

Notice to be given on retirement of partner.

Usual provisions in partnership deeds.

The rights and liabilities of the partners as between themselves are usually regulated by express contracts. A well drawn partnership deed defines the nature of the business, the duration of the partnership, and the name of the firm. It also states the amount of capital, and by whom and in what shares it is to be brought in, and the proportions in which profits and losses are to be divided. It also provides for a yearly or other periodical balancing of accounts, and for the arrangements to be made on the determination of the partnership whether by effluxion of time, the death or bankruptcy of a partner, or otherwise.

Provisions as to capital, profits and loss.

The provisions relating to capital and the division of profits and losses often require special attention. Where the capital is brought in by the partners equally, and they share equally in the profits, there is no difficulty; but if this is not the case, the respective rights of the partners as regards capital and profits and losses should

the profits or interest payable in respect of such loan, and that the vendor of such goodwill as aforesaid shall not recover any such profits until the claims of the other creditors of the trader for valuable consideration in money or money's worth have been satisfied.

Provision of Act as to lender not being a partner does not apply if the result of the arrangement is to confer on him the rights and obligations of a partner.

The above enactment has been criticised, as being founded to some extent on a misapprehension of the law as it stood when the Act passed, there being no rule (as is supposed in the Act) that a loan of money on an agreement that interest should be paid varying with the profits would constitute the lender a partner. And it has been held that the Act does not apply to any contract unless the advance of money would independently of the Act have created the relation of debtor and creditor as distinguished from the relation of partners, and a declaration in the deed that the lender shall not be a partner will be nugatory if the result of the agreement, as a whole, is to give him the rights and impose on him the obligations of a partner (Pooley *v.* Driver, 5 Ch. D. 458; Ex parte Delhasse, 7 Ch. D. 511).

be carefully defined. Suppose, for instance, that A. and B. are partners on the terms of an equal division of profits, but A. brings in all the capital. In the absence of express stipulation, the capital will be considered as thrown into the common fund, and will, like the profits, belong to the partners equally. This is not generally intended, and provision should therefore be made in such a case for securing to A. the return of his capital out of the partnership assets on the winding up of the business, and the payment to him of interest thereon in the meantime.

When more capital is brought in by one partner than by the other, provision should be made for its return, and for interest in the meantime.

If the business is conducted at a loss, or if the net returns are less than the capital employed in producing them, the capital is of course diminished to this extent, and the share of each partner is diminished in proportion. If the whole of the capital is lost, and the firm has moreover incurred liabilities beyond what the capital will satisfy, such liabilities will, in the absence of special agreement, have to be borne by the partners in the same proportions in which they would have been entitled to profits (if any).

Participation in losses.

A partnership is determined by the death or bankruptcy of a partner, and when there are three or more partners, the death or bankruptcy of one is a dissolution as to all, unless the contract provides to the contrary. Lunacy does not of itself determine the partnership, but under the Act 16 & 17 Vict. c. 70 (*b*), the Lord Chancellor may, on the application of the other partners, decree a dissolution.

Partnership determines by death or bankruptcy.

Effect of lunacy.

A judgment obtained against one member of a firm for his private debt may be put in execution against his share of the partnership effects, and such an execution operates as a dissolution of the partnership (*c*).

Execution against one partner, is a dissolution.

It is not unusual to provide that in the event of certain breaches of duty by a partner, the other partner or partners shall have the power of expelling him. In the absence of such a provision, the Court will decree a dissolution if the misconduct of a partner is such as

Misconduct of a partner, when a ground for dissolution.

(*b*) Sect. 123.

(*c*) Skipp *v.* Harwood, 2 Swans. 586; Aspinall *v.* London & N. W. Ry. Coy., 11 Hare, 325.

to destroy altogether the mutual confidence without which his business cannot be carried on (*d*).

Special provisions necessary to prevent compulsory winding-up, on death, &c., of a partner.

Where a partnership is determined by the death or retirement of a partner, it is generally wished that the business shall continue to be carried on by the others. In order therefore to prevent the compulsory winding up of the concern, it is usual to provide some other mode of ascertaining the share of the deceased or outgoing partner. One plan is to provide that the share of capital shall be taken at its value as ascertained by the last yearly balance sheet, and that some fixed sum by way of interest from that time up to the death or retirement shall be allowed in lieu of profits. This plan obviates the necessity for any new balancing of accounts, but it is open to this objection that if there should have been any serious loss since the last stock-taking, the loss will fall on the continuing partners alone. Another plan is to give to the continuing partners the option of purchasing the share at a valuation, to be made on the day of the death or retirement. It has been decided that a clause of this kind will be enforced, and that if the valuation cannot be made by the person and in the manner directed, the Court will ascertain the value (*e*).

Plan for ascertaining value of deceased partner's share, by reference to last yearly account,

or by valuation.

Goodwill.

In framing any provision for determining the share of a deceased or outgoing partner, it should be stated whether anything is to be allowed for the goodwill.

(*d*) Smith *v.* Jeyes, 4 Beav. 503.
(*e*) Denham *v.* Bradford, L. R. 5 Ch. 519.

No. I.

DEED *of* Copartnership *between* Two Persons.

BETWEEN TWO PERSONS.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*one partner*), of the one part, and C. D., of, &c. (*other partner*), of the other part: WITNESSETH that the said A. B. and C. D., hereby mutually covenant and agree to become and be partners in the trade or business of ——, upon and subject to the terms, conditions, and stipulations expressed in the following Articles (that is to say):—

Parties. Witnesseth. Mutual covenant to become partners.

1. The partnership shall continue for the term of twenty-one years from the date of these presents, unless the same shall be previously determined under the provisions hereinafter contained. Duration of partnership.

2. The firm and style of the partnership shall be —— & Co. Title of firm.

3. The partnership business shall be carried on at or upon the leasehold premises being No. —, —— street, in the city of ——, held by the said A. B. and C. D. under a lease, dated the —— day of ——, at the yearly rent of £——, or at such other place as shall from time to time be agreed on by the said partners. Place of business.

4. The bankers of the firm shall be Messrs. —— & Co., at ——, or such other bankers as shall be from time to time agreed on by the partners. Each partner shall be at liberty to draw cheques in the name of the firm. Bankers.

5. The capital of the firm shall consist of the sum of £——, to be brought in by the partners in equal shares, [*or* in the shares following, namely, *state the shares*], and to be made up as follows, (that is to say), the implements and plant now used in the said business shall be deemed to be of the value of £——, and to be brought in by the said partners in equal shares [*or* in the shares aforesaid], and the further sum of £—— shall be paid to the credit of the firm by the said partners in equal shares [*or* in the shares aforesaid] immediately after the execution of these presents. Capital.

6. If either partner shall at any time, with the consent of the other partner, advance any money to the firm beyond the amount of the capital hereby agreed to be brought in by him, the same shall be a debt to him from the firm and may be withdrawn by Advances by partners to bear interest.

BETWEEN TWO PERSONS.

him at any time at one calendar month's notice, and shall in the meantime bear interest after the rate of £5 per cent. per annum, computed from the time of such advance.

Profits.

7. The profits of the business shall belong to the partners in equal shares [*or* as to — parts thereof to the said A. B., and as to the remaining — part thereof to the said C. D.].

Expenses and losses.

8. The rent of the said leasehold premises, or of any other premises where the business shall for the time being be carried on, and all rates, taxes, payments for insurance, and other outgoings whatsoever, in respect of the same, and all expenses incurred in or about the said business, and all losses if any arising therein shall be paid and borne out of the earnings of the said business, or if the same shall be deficient, shall be paid and borne by the partners inequal shares.

Power to each partner to draw monthly sums.

9. Each partner may draw out of the partnership cash the monthly sum of £—— on account of his share of profits for the current year, and if on taking any yearly account it shall appear that the sums drawn out by him exceed his share of profits for that year he shall forthwith repay the excess.

Books of account to be kept

10. Proper books of account shall be kept by the partners, and entries made therein of all such matters, transactions, and things as are usually written and entered in books of account kept by persons engaged in concerns of a similar nature, and such books, together with all securities, letters, and other things belonging to or concerning the said partnership, shall be kept at the office where the partnership business shall for the time being be carried on, and each of the partners shall have free access to inspect, examine, and copy the same, whenever he shall think fit.

Partners to give whole time to business, and to be faithful to each other.

11. Both partners shall devote their whole time and attention to the partnership business, and neither of them shall, directly or indirectly, be engaged in any other business. They shall be faithful to each other in all partnership transactions, and at all times furnish to each other correct accounts and statements of and concerning all such transactions without any concealment or suppression. Neither partner shall employ any money or effects belonging to the firm, or engage its credit except on account of the partnership business, and the *bonâ fide* carrying on of the same, or do or suffer anything whereby any such money or effects or his interest therein may be taken in execution or in any wise

assigned, charged, or incumbered for or in respect of his private debts. Neither partner shall without the consent of the other become bail or surety for any person.

Neither partner to discharge clerk or servant without consent of other.

12. NEITHER partner shall without the consent of the other discharge any clerk or servant in the employment of the firm except for flagrant misconduct.

Not to give credit after notice to the contrary.

13. NEITHER partner shall lend any money or deliver on credit any goods belonging to the firm to any person whom the other partner shall by notice in writing have forbidden him to trust, and if either partner shall do so, he shall make good to the firm all loss arising thereby.

Not to release or compound debt.

14. NEITHER partner shall without the consent in writing of the other release or compound any debt owing to or claim of the firm, and if either partner do so, he shall, if required by the other, make good to the firm the full amount of such debt or claim.

Annual accounts.

15. ON the 31st day of December in every year during the continuance of the said partnership, a general account shall be taken up to the same 31st day of December, of the stock in trade, credits, property and effects, debts and liabilities of the said partnership, and every such annual account shall be entered in two books, and be signed in each such book by each partner, and after such signature each of them shall keep one of the said books, and shall be bound by such account, except that if any manifest error be found therein by either partner, and signified to the other within three calendar months after the same shall have been so signed by both of them, such error shall be rectified. Immediately after the signing of such account each partner may draw out his share of the profits as thereby appearing [subject however to the next article].

Reserve fund.

[16. IMMEDIATELY after taking such annual account one tenth part of the profits for the past year shall be set apart as a reserve fund to meet future losses and extraordinary expenses, until the reserve fund shall amount to £——. The reserve fund shall be invested from time to time in securities agreed on by the partners, and the interest or income arising therefrom shall be deemed part of the profits of the said business and be divided accordingly. If the reserve fund after having been at its full amount shall be diminished, one tenth part of the annual profits shall again be added thereto until it reaches its full

BETWEEN TWO PERSONS.

amount, and so on from time to time as occasion may require (*a*).]

On death or bankruptcy of a partner, the other partner may purchase his share.

17. If either partner shall die or become bankrupt during the partnership term, the other partner shall be at liberty to purchase the share of the deceased or bankrupt partner in the partnership property upon giving to his legal personal representative or trustee (as the case may require) a notice in writing to that effect at any time within three calendar months from the death or bankruptcy, such purchase to take effect as from the day of such death or bankruptcy.

Power to either party to retire, in which case his share may be purchased by the other.

[18. Either partner may retire from the firm at the end of any year of the partnership term, upon giving to the other partner or leaving at the place where the business is carried on twelve calendar months' previous notice in writing in that behalf. In such case the other partner shall be at liberty to purchase the share of the retiring partner in the property of the firm upon giving to him or leaving at the said place of business a notice in writing to that effect at any time before the determination of the partnership by reason of the first mentioned notice (*b*).]

Power to expel a partner in certain cases.

[19. If (*c*) either partner shall commit a wilful breach of

(*a*) This will only be inserted when from the nature of the business it is thought necessary.

(*b*) The above clause will be inserted only when expressly stipulated for. Sometimes the following clause will meet the intention of the parties:

Power to either partner to determine partnership in the event of no profits.

If upon taking any such annual account as aforesaid it shall appear that the partnership business has not been carried on during the then preceding year so as to produce profit after allowing to each partner interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business, it shall be lawful for either partner, at any time within one calendar month from the time of the taking such account, to give a notice in writing to the other partner of his desire that the said partnership shall determine, or to leave such notice at the place where the partnership business shall for the time being be carried on, and in such case the partnership shall cease and determine immediately upon the giving or leaving of such notice.

(*c*) It must depend on the circumstances whether this clause shall be inserted. Sometimes it may be desirable to specify more particularly what acts shall justify a notice of expulsion, and sometimes it will be better to omit the clause, leaving each party to his remedy in the Court in case of the misconduct of the other.

these articles or act contrary to the good faith which ought to be observed between partners, or shall become incapable by reason of lunacy or otherwise to take his part in the management of the partnership business, then and in either of such cases the other partner may by a notice in writing given to him, or (if he shall be found lunatic by inquisition) to his committee, expel him from the partnership as from the date of such notice, but so that if the expulsion shall be on account of a breach of duty the notice shall be given within one calendar month after the discovery thereof: And if any question shall arise whether a case has happened to authorise the exercise of this power, such question shall be referred to arbitration under the provision in that behalf hereinafter contained. The partner giving such notice of expulsion as aforesaid may by the same or any other notice to be given as aforesaid within one calendar month from the date of the first notice signify his intention to purchase the share of the expelled partner in the partnership property, in which case he shall be deemed the purchaser thereof accordingly as from the date of such expulsion.]

Share of expelled partner may be purchased by other partner.

20. THE price to be paid for the purchase of the share of a deceased or bankrupt [or retiring or expelled] partner under the foregoing provisions shall be the net value thereof after providing for the debts and liabilities of the firm on the day of the determination of the partnership, and if the parties shall be unable to agree as to the value thereof, the same shall be ascertained by two indifferent persons, one to be appointed by the vendor or vendors, and the other by the purchaser, or by an umpire to be appointed by the two valuers before they proceed to business, and if either party shall fail to appoint a valuer for the space of fourteen days after being called on so to do by the other party, or shall appoint a valuer who shall refuse to act, the valuer appointed by the other party shall make a final valuation alone. The sum of money ascertained to be the value of the said share shall be paid by the purchaser to the vendor or vendors by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four calendar months respectively, from the determination of the partnership, with interest for the same, or the instalments thereof for the time being remaining unpaid, after the rate of £5 per cent. per annum, and shall be secured by the bond of the purchaser who shall also by the same

Mode of ascertaining value of share on purchase.

Purchase money to be paid by instalments.

or another bond indemnify the vendor or vendors and the estate of the deceased or outgoing partner against the debts and liabilities of the firm, and the vendor or vendors shall at the request and cost of the purchaser do and execute all acts, deeds, and things necessary or proper for vesting in him the share purchased by him as aforesaid and for enabling him to get in the outstanding credits and effects of the firm.

Nothing to be allowed for goodwill.

21. In ascertaining the sum of money to be paid for the purchase of the share of a deceased or outgoing partner as aforesaid nothing shall be allowed for the goodwill of the business (*d*).

Final division at end of partnership if no other arrangement is made.

22. Upon the determination of the partnership, if no other arrangement is made under the foregoing provisions, the property and effects of the firm shall be realized and the proceeds applied, 1st, in paying the debts and liabilities of the firm; 2ndly, in repaying to each partner the amount of capital brought in by him with such interest if any as may be owing thereon, and the surplus (if any) shall be divided between the partners or their respective representatives in equal shares [*or* in proportion to their respective shares in the profits of the said business].

Dissolution may be advertised in *London Gazette*, &c.

23. Upon the determination of the partnership during the joint lives of the partners either of them shall be at liberty to advertise the dissolution in the *London Gazette* and other papers, and to send notices thereof to customers and others.

Arbitration clause.

24. If during the continuance of the said partnership, or at any time afterwards, any difference shall arise between the said partners, or between one of them and the executors or administrators of the other of them, or between their respective executors or administrators, in regard to the construction of any of the articles herein contained, or to any division, act, or thing to be made or done in pursuance hereof, or to any other matter or thing relating to the said partnership or the affairs thereof, such difference shall be forthwith referred to two arbitrators, one to be appointed by each party in difference, or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them, and every such reference shall be deemed an arbitration within the Common Law Procedure Act, 1854, and be subject to the provisions as to arbitration contained in the said Act.

In witness, &c.

(*d*) If the goodwill is to be paid for, it should be stated.

No. II.

DEED *of* Partnership *between* Two Persons (*a very short form*) (*a*).

BETWEEN TWO PERSONS. (*Short Form.*)

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between A. B., of, &c. (*one partner*), of the one part, and C. D., of, &c. (*other partner*), of the other part, WITNESSETH that the parties hereto covenant and agree to become partners in the business of ——, upon and subject to the following conditions, namely:—

Duration of partnership.

1. The partnership shall commence on the —— day of ——, and shall continue until determined by six calendar months' notice, to be given by one partner to the other, or to be left at the place of business.

Name of firm and place of business.

2. The name of the firm shall be ——, and the business shall be carried on at the premises No. —— (*describe the premises*), or at such other place as the partners shall from time to time agree on.

Bankers

3. The bankers of the firm shall be —— & Co.

Capital.

4. The capital of the firm shall be £——, and the same shall not be reduced without the consent of both partners. The said capital is at present represented by the stock in trade in and upon the said premises, which have been valued at £——, and the sum of £—— cash standing to the credit of the firm at the said bank, and which stock in trade and cash belong to the partners in equal shares.

Profits and osses

5. The profits and losses of the business shall be divided between the partners in equal shares (*b*).

Yearly stock-taking

6. Proper accounts shall be kept of all partnership transactions, and on the 31st day of December in every year, or as soon afterwards as possible, a balance-sheet shall be made out, shewing the assets and liabilities of the firm, and what belongs and is

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(*a*) In this Precedent those clauses are omitted which only express what would be the rule of law or equity in the absence of stipulation.

(*b*) This Precedent can be easily adapted to a case where the capital is found by the parties and the profits are divided in unequal shares. But it should be borne in mind that if the capital is found in different proportions to those in which profits are divided, there should be a provision allowing interest on capital.

BETWEEN TWO PERSONS. (*Short Form.*)

due to each partner for capital and share of profits, and the same shall be signed by both partners, and when so signed shall be conclusive, except that if a manifest error shall be discovered therein within three calendar months after the signature thereof such error shall be rectified.

Monthly drawings.

7. EACH partner may draw the monthly sum of £—— out of the partnership cash on account of his share of profits for the current year, but if on taking the yearly account it shall appear that the monthly sums drawn out by either partner exceed his share of profits, he shall forthwith refund the excess.

Final account and division at end of partnership.

8. UPON the determination of the partnership (*c*), the assets of the partnership shall be realised and applied, 1st, in payment of the debts and liabilities of the firm, and 2ndly, in paying to each partner the amount of his capital in the said business, and the surplus (if any) shall be divided between the partners or their respective representatives in equal shares [*or* in proportion to their shares in the profits of the business].

Arbitration clause.

9. ALL matters in difference in relation to the partnership affairs shall be referred to the arbitration of two indifferent persons, one to be appointed by each party, and every such arbitration shall be subject to the provisions relating to arbitration contained in the Common Law Procedure Act, 1854.

IN WITNESS, &c.

No. III.

BETWEEN TWO PERSONS IN UNEQUAL SHARES.

DEED *of* PARTNERSHIP *between* TWO PERSONS, *where* ONE *finds the* WHOLE *of the* CAPITAL *to commence with, and the* PROFITS *are divided in* UNEQUAL SHARES—SPECIAL PROVISION *for the* WIDOW *or* CHILDREN *of a deceased partner.*

Parties.

Recital that one partner has for some time carried on business.

THIS INDENTURE, &c., (*date and parties*): WHEREAS the said A. B. has for some years carried on the business of —— upon certain leasehold premises in —— street in the town of

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(*c*) If it is wished to give a surviving partner the option to purchase the share of a deceased partner, a provision to that effect can be framed from Precedent No. I.

——, held by him for a term of years which will expire on the —— day of ——, 18—, at the yearly rent of £——: AND WHEREAS the said A. B. has agreed to admit the said C. D. into partnership with him upon the terms and conditions hereinafter expressed: AND WHEREAS it is part of the arrangement that the plant and stock in trade in and about the said premises shall be taken to by the said partnership at the sum of £——, at which the same have been valued; and that the said A. B. shall pay into the —— Bank to the partnership account the sum of £——, and that the said sums of £—— and £——, making together the sum of £——, shall be considered as capital brought in to the said business by the said A. B., and shall be credited to him in the partnership books accordingly: AND WHEREAS in performance of the said agreement the said A. B. has before the execution of these presents paid the sum of £—— into the said —— Bank to the partnership account: NOW THIS INDENTURE WITNESSETH, &c. (*covenant to become partners as in Precedent No. I., p.* 615).

BETWEEN TWO PERSONS IN UNEQUAL SHARES.

Agreement to admit other partner.

Arrangement that stock in trade, &c., shall be taken by firm at valuation.

Payment by one partner of cash as capital to firm.

Witnessing part.

1, 2. (*Duration of partnership and name of firm, see Precedent No. I.*)

3. THE business shall be carried on at the premises No. —— (*describing them*); and the firm shall be considered tenants of the said premises to the said A. B., at the yearly rent of £——, payable half-yearly on the —— day of ——, and the —— day of —— in every year, and they shall pay all rates and taxes payable in respect of the said premises, and shall keep the same in good repair and insured against loss or damage by fire in the full value thereof. The tenancy may be determined by the firm on the —— day of —— in any year by six calendar months' notice, but the said A. B. shall not determine the tenancy so long as the firm shall desire to carry on its business there.

Place of business.

4. THE bankers, &c. (*as in Precedent No. I., Art.* 4.)

5. THE present capital of the partnership is the sum of £——, made up of the said plant and stock in trade, and the said sum of £—— cash standing to the account of the firm at the said bank, the whole of which capital has been brought in by the said A.B., as hereinbefore is mentioned.

Capital

6. THE profits of the said business shall be divided between the partners as follows, namely, the said A. B. shall be entitled to three equal fourth parts thereof, and the said C. D. to the

Profits.

BETWEEN TWO PERSONS IN UNEQUAL SHARES.

remaining one equal fourth part thereof. Whenever the one fourth share of profits belonging to the said C. D. shall in any year exceed £——, he shall leave the excess in the said business as so much capital brought in by him, until by that means his capital shall amount to £——.

Interest on capital.

7. EACH partner shall receive interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business, and such interest shall be allowed before any division of profits is made.

Losses.

8. ALL expenses and losses incurred in carrying on the partnership business shall be paid out of the earnings, and if the same shall be insufficient, the deficiency shall be made up by the partners in the shares in which they are entitled to the profits of the said business.

9 to 23. (*As in Precedent No. I.*)

Provisions for giving one of the partners the option of purchasing lease.

24. IF the said A. B. shall die during the continuance of the said partnership, the said C. D. shall have the option of purchasing from his representatives the messuage in —— aforesaid, where the said business is carried on, for all the then residue of the term of fourteen years therein now vested in the said A. B., the price to be as follows (that is to say), IF the said A. B. shall die on or before the —— day of —— next, then the price to be £100, but if he shall die at any subsequent period, then the price to fall and be reduced £5 at the expiration of every clear period of six calendar months, during which the said A. B. shall survive the said —— day of —— next, but no fall or reduction shall be made on account of any period less than six calendar months, the purchaser to take subject to the payment of the yearly rent of £—— reserved by the lease of the same premises, and to the observance and performance of the covenants and conditions in the same lease contained, and on the lessee's part to be observed and performed; provided, however, that the said C. D. shall signify his intention of becoming the purchaser of the said messuage to the representatives of the said A. B. within twelve calendar months next after the decease of the said A. B., and the said C. D. shall, without requiring the production of the lessor's title, accept an assignment of the said premises for all the then residue of the said term subject as aforesaid, and shall enter into the usual covenant for the payment of the said rent, and the observance and performance of the said covenants and

conditions, and for indemnifying the said representatives and their estate and effects, and also the estate and effects of the said A. B. therefrom, such assignment and covenant to be prepared by and at the expense of the said C. D.

BETWEEN TWO PERSONS IN UNEQUAL SHARES.

Special provisions in case of death of either partner leaving a widow or children.

25. If either partner shall die during the continuance of the said partnership, leaving a widow, child or children him surviving, the surviving partner shall, during the remainder of the said term of fourteen years hereby appointed for the continuance of the said partnership, if such surviving partner and also the widow or a child or children of the deceased partner shall so long live, pay to the executors or administrators of the deceased partner (in addition to any other moneys to which they will be entitled under the foregoing articles) the annual sum of £——, by equal quarterly payments, the first of such payments to be made at the end of three calendar months next after the decease of the partner so dying as aforesaid.

26. (*Arbitration clause—see Precedent No. I., Art.* 24.)

No. IV.

DEED *of* COPARTNERSHIP *between* FOUR PERSONS.

BETWEEN FOUR PERSONS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*one partner*), of the first part, C. D., of, &c. (*another partner*), of the second part, E. F., of, &c. (*another partner*), of the third part, and G. H., of, &c. (*another partner*), of the fourth part, WITNESSETH, that the said A. B., C. D., E. F., and G. H., hereby mutually covenant and agree to become partners in the trade or business of ——, upon and subject to the terms, conditions, and stipulations expressed in the following Articles (that is to say),

Mutual covenants.

1, 2, 3. (*Same as in Precedent No. I.*)

Bankers.

4. The bankers of the firm shall be ——. All cheques shall be signed by at least two partners.

Capital.

5. The capital of the firm shall be £——, made up and brought in as follows (that is to say): The plant and stock in trade in

BETWEEN FOUR PERSONS.

and upon the said premises in —— street belonging to the said A. B. and C. D., and which have been valued at £——, shall be taken to and become the property of the firm hereby constituted, and each of them the said A. B. and C. D. shall be credited in respect thereof with the sum of £——, as so much capital brought in by him: The said E. F. shall forthwith pay the sum of £—— to the account of the said firm at the said bank, and shall in respect thereof be credited with £—— as so much capital brought in by him: And the said G. H. shall bring in the sum of £—— out of his share of profits as hereinafter is provided.

Interest on capital.

6. Each partner shall receive interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business.

Advances.

7. If any partner shall with the consent of the other partners advance to the firm any money beyond the capital hereby agreed to be brought in by him, the same shall be a debt from him to the firm and may be withdrawn at any time at one calendar month's notice, and shall in the meantime bear interest at the rate of £5 per cent. per annum.

Profits.

8. The profits of the business shall belong to the partners in the following shares, namely (*state the proportions*).

Losses and expenses.

9. The rent of the said premises where the business is carried on, and all expenses incurred in or about the said business, and all losses (if any) arising thereon shall be paid and borne out of the earnings of the business, and if the same shall be insufficient shall be paid and borne by the partners rateably and in proportion to their respective shares in the profits of the business.

Drawings by partners.

10. Each partner shall be at liberty to draw out of the partnership cash on account of his share of profits for the current year, as to the said A. B. the monthly sum of £——, as to the said C. D. the monthly sum of £——, as to the said E. F. the monthly sum of £——, and as to the said G. H. the monthly sum of £——, and if the monthly sums drawn out by any partner in any one year shall exceed his share of profits for that year as appearing by the yearly account, the excess shall be forthwith repaid by him to the firm.

11. Proper books of account, &c. (*as in Precedent No. I., Art.* 10).

Mutual

12. All the partners shall devote their whole time and atten-

tion to the partnership business, and no partner shall be engaged directly or indirectly in any other business. They shall be faithful to each other in all partnership transactions, and at all times furnish to each other correct accounts and statements of and concerning all such transactions without any concealment or suppression. No partner shall employ any money or effects of the firm or engage its credit except on account of the partnership business and the *bonâ fide* carrying on of the same, or do, or suffer anything whereby any such money or effects or his share therein may be taken in execution or in anywise assigned, charged, or incumbered for or in respect of his private debts. No partner shall, without the consent of the other partners or partner, become bail or surety for any person.

Obligations of partners.

13. No partner shall lend any money or deliver upon credit any goods belonging to the firm to any person whom the other partners or partner shall by notice in writing have forbidden him to trust, and if any partner shall do so, he shall make good to the other partners all loss arising thereby.

No partner to give credit, if forbidden by other,

14. No partner shall release or compound any debt owing to or claim of the firm without the consent in writing of the other partners or partner, and if any partner shall do so, he shall at the request of the other partners or any or either of them pay to the firm the full amount of such debt or claim.

nor to release or compound debts, &c.,

15. No partner shall without the consent of the other partners or partner discharge a clerk or servant except for flagrant misconduct.

nor to discharge clerks.

16. On the 31st day of December in every year during the continuance of the partnership, &c. (*same as Precedent No. I., Art. 15, substituting "four books" for "two books," and "all the partners" for "both partners" where necessary.*)

Yearly account.

17. After the signing of the annual account each partner may draw out his share of the profits as thereby appearing, save and except that so long as any part of the said sum of £—— hereby agreed to be brought in as capital by the said G. H. shall remain unpaid, the said G. H. shall receive out of his share of profits for such year the sum of £—— only, and the surplus of his share shall remain in the said business until by this means the whole of the said sum of £—— shall have been brought in.

Each partner to be at liberty to draw out his share after yearly account.

18. Upon the termination of the partnership by effluxion of

Provision

for final winding-up of partnership affairs.

the said term of —— years, the assets of the firm shall be realised, and the proceeds applied, 1st, in payment of the debts and liabilities of the firm, and 2ndly, in paying to each partner the amount of capital brought in by him into the said business with all interest (if any) due thereon, and the surplus (if any) shall be divided between the partners rateably and in proportion to their respective shares in the profits of the business.

Power to any partner to retire.

19. Any partner shall be at liberty to retire from the firm at the end of any year of the term, upon giving to the other partners or partner, or leaving at the place where the business is carried on, twelve calendar months' previous notice in writing in that behalf (*a*).

Provision for expulsion of partner in certain events.

20. If any partner (*b*) shall make, draw, accept, or indorse any bill of exchange or promissory note, or give any security in the name of the firm (except it be done on account of the partnership business, and in the *bonâ fide* carrying on of the same), or shall do or suffer anything whereby the partnership effects or any of them shall be taken in execution or charged or incumbered for or in respect of his private debts, or shall fail to account for money received by him in respect of any partnership transaction after being required so to do by the other partners or any of them, or shall act in other respects contrary to the good faith which ought to be observed between partners, or shall become incapable by reason of lunacy or otherwise to take his part in the management of the partnership business, then and in either of such cases the other partners or partner may by a notice in writing given to him or (if he shall be found a lunatic by inquisition) to his committee expel him from the partnership as from the date of the notice, but so that if the expulsion shall be on account of any breach of duty the notice shall be given within three calendar months after the discovery thereof. And if any question shall arise whether a case has happened to authorize the exercise of this power, such question shall be referred to arbitration under the power in that behalf hereinafter contained.

On retirement, &c., of partners notice of

21. If any partner shall retire or be expelled from the partnership as aforesaid or shall become bankrupt, he shall be deemed

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(*a*) This clause will be inserted only when stipulated for.
(*b*) See note (*c*), at p. 618, *suprà*.

to have ceased to be a partner on the day of the date of such retirement, expulsion, or bankruptcy as the case may be, and the continuing partners or partner shall be at liberty to advertise the dissolution of the partnership as regards the late partner in the *London Gazette* and elsewhere, and to sign the name of the late partner to the notice of dissolution.

Dissolution to be inserted in *Gazette.*

22. Upon the death of any partner or upon any person ceasing to be a partner by reason of his retirement, expulsion, or bankruptcy as aforesaid, the share of such deceased or outgoing partner in the partnership business and in the stock in trade credits and effects thereof, shall, as from the time of his death or his ceasing to be a partner as aforesaid, go and belong to and be purchased by the remaining partners or partner, and if more than one in equal shares [*or* in shares proportionate to their then shares in the business], and they or he shall take upon themselves or himself all the partnership debts and liabilities as from the same date, and the partnership shall be continued between the said remaining partners, if more than one, under the provisions of these presents: Provided always that if the surviving or continuing partners or partner shall within six calendar months from the death of the late partner or the time when he shall cease to be a partner as aforesaid, give to his executor, administrator, trustee, or committee, or to the late partner himself (as the case may require), a notice in writing stating the intention of the surviving or continuing partners or partner to wind up the partnership affairs, instead of purchasing the share of the late partner as aforesaid, or leave a notice in writing to that effect at the place where the partnership business shall be carried on, then and in such case the partnership affairs shall be wound up under Article 18 as if the partnership had determined by effluxion of time.

Upon death &c., of partner his share to belong to other partners as purchasers.

unless they shall within six months give notice of their intention not to purchase.

23. (*If it is intended that the share of a deceased partner shall be ascertained by the last annual stock-taking.*) The surviving or continuing partners or partner succeeding to and purchasing the share of a late partner under the last preceding article, shall pay to his executor or administrator, or trustee or committee, or to the late partner himself, as the case may require, such sum of money as is next hereinafter mentioned (that is to say): If the late partner shall have died or ceased to be a partner before the 31st day of December next, then a sum

Provision for ascertaining share of deceased or out-going partner by reference to last annual stock-taking

BETWEEN FOUR PERSONS.

of money equal to the capital brought in by him into the partnership as hereinbefore mentioned, together with interest on the same sum of money after the rate of £—— per cent. per annum, computed from the commencement of the partnership until the day of his death, or of his ceasing to be a partner as aforesaid, such interest to be in lieu of any share of profits during that period: If the late partner shall have died or ceased to be a partner on the 31st day of December in any year, then such a sum of money as by the annual account taken under Article 16 shall be found to be the net amount or value of the said share on the same 31st day of December: And if the late partner shall have died or ceased to be a partner on any day later than the 31st day of December next, and not being any subsequent 31st day of December, then such a sum of money as by the annual account taken under Article 16 shall be found to be the net amount or value of the said share on the 31st day of December immediately preceding his death, or the day of his ceasing to be a partner as aforesaid, with interest on the same sum of money after the rate of £—— per cent. per annum, computed from the same 31st day of December up to the day of his death or of his ceasing to be a partner as aforesaid, such interest to be in lieu of any share of profits during the same period. The interest payable under this Article in lieu of profits shall be paid on demand, and the principal money payable under this Article shall be paid by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four calendar months respectively computed from the death of the late partner, or from the time of his ceasing to be a partner as aforesaid, with interest on the amount for the time being remaining unpaid, after the rate of £5 per cent. per annum, computed from the same time. The surviving or continuing partners or partner shall give their or his bond for securing the payment of the said principal money by such instalments and with such interest as aforesaid to the person or persons entitled thereto, and also for indemnifying him and them from the partnership debts and liabilities, and such person or persons shall, at the request and cost of the surviving or continuing partners or partner, execute and do all such acts, deeds and things necessary or proper for vesting the said share in them or him, and for enabling him or them to collect and get in the partnership credits and effects.

BETWEEN FOUR PERSONS.

Share of deceased or outgoing partner to be ascertained by valuation.

23A. (*If it is intended that there shall be a new stock-taking to ascertain the share of the deceased or outgoing partner, the following will be substituted for Article* 23 *above.*) UPON the death of a partner, or upon a person ceasing to be a partner as aforesaid, the sum to be paid for the purchase of his share in the property of the partnership shall be the net value of such share on the day of his death or of his ceasing to be a partner as aforesaid, after providing for the debts and liabilities of the firm, and so that in estimating such value, the goodwill of the business shall not be taken into account (*a*). AND if the parties shall be unable to agree as to the net value of the said share, the same shall be ascertained by two indifferent persons, one to be appointed by the vendor or vendors, and the other by the purchaser or purchasers, or by an umpire to be appointed by the two valuers before they proceed to business, and if either party shall fail to appoint a valuer for the space of fourteen days after being called on so to do by the other party, or shall appoint a valuer who shall refuse to act, the valuer appointed by the other party shall make a final valuation alone. The sum of money ascertained as the net value of the said share shall be paid by four equal instalments, &c. (*as in the above clause, No.* 23 *to the end*).

Questions of management to be decided by a majority of partners.

24. ALL questions which may arise during the continuance of the said partnership touching the conduct or management of the partnership affairs, including the employment and dismissal of clerks and servants, the giving of credit, and the compounding of debts and claims, shall be decided (in case there shall be three or more partners for the time being) by the majority in number of the partners.

Arbitration clause.

25. IF any difference shall arise between the partners for the time being, or their respective representatives, or any other persons interested under these presents, in regard to the construction of these presents, or to any act or thing to be done in pursuance hereof, or to any other matter or thing relating to the said partnership or the affairs thereof, then (subject to the last preceding Article) the matter in difference shall be referred to, &c. (*Arbitration clause, suprà*, p. 620.)

IN WITNESS, &c.

(*a*) If the goodwill is to be paid for, it should be stated.

No. V.

BETWEEN BREWERS.

DEED *of* PARTNERSHIP *between* BREWERS. USUAL CLAUSES, *including a* PROVISION *enabling either* PARTNER *to* NOMINATE *by Will a* SON *to* SUCCEED *him.*

Parties.

Recital of agreement by present partners to take in third.

Particulars of assets and liabilities of present partners.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*one partner*), of the first part, C. D., of, &c. (*other partner*), of the second part, and E. F., of, &c. (*other partner*), of the third part: WHEREAS the said A. B. and C. D. have for some time past carried on the business of brewers and maltsters at ——, and it has been agreed that the said E. F. shall join them in the said business: AND WHEREAS the property and assets of the said A. B. and C. D. as such partners as aforesaid consist of, 1st, the freehold and leasehold houses and premises mentioned and described in the 1st part of the schedule hereunder written, and which have been valued at £——, without any deduction for the mortgages affecting the same; 2ndly, the brewery plant and stock-in-trade, the particulars whereof are stated in the 2nd part of the said schedule, and which have been valued at £——; and 3rdly, the book debts owing to the said A. B. and C. D., the particulars whereof are set forth in the 3rd part of the schedule, and which book debts, after allowing for bad or doubtful ones, are estimated at £——: AND WHEREAS the mortgages affecting the said freehold and leasehold premises, and the other debts and liabilities of the said A. B. and C. D. as such partners as aforesaid amount to the sum of £——, and the particulars thereof are set forth in the 4th part of the said schedule: AND WHEREAS the said debts and liabilities being deducted from the value of the said property and assets makes the net value of the said property and assets to be £——: AND WHEREAS it has been agreed that the said E. F. shall purchase from the said A. B. and C. D. one equal fifth part or share of the said property and assets subject to the said debts and liabilities for the sum of £——, being one fifth part of the said sum of £——, and he has accordingly paid or secured the payment of the said sum of £—— to the said A. B. and C. D. before the execution of these presents as they do hereby acknowledge: AND WHEREAS the said

Agreement that new partner shall purchase a share of assets,

and payment by him of purchase-money.

Conveyance and assess-freehold and leasehold houses and premises described in the 1st part of the schedule hereto have been duly conveyed and assigned by deeds bearing even date with these presents, so as to vest two undivided fifth parts thereof in the said A. B., two other undivided fifth parts thereof in the said C. D., and the remaining one undivided fifth part thereof in the said E. F., subject to the mortgages affecting the same respectively: NOW THIS INDENTURE WITNESSETH that, in consideration of the premises the said A. B., C. D., and E. F., hereby mutually covenant and agree to become and remain partners in the trade or business of brewers and maltsters upon and subject to the conditions expressed in the following Articles:—

ment of freehold and leasehold property so as to vest share in new partner.

Witnessing part.

Mutual covenant to become partners.

1, 2, 3. (*See Precedent No. I., Articles* 1, 2, 3.)

Bankers.

4. The bankers of the firm shall be ——. All cheques shall be signed by at least two of the partners.

Capital.

5. The property and assets late of the said A. B. and C. D., the particulars whereof are set forth in the 1st, 2nd and 3rd parts of the schedule hereto, shall be the property and assets of the firm hereby constituted, and the debts and liabilities mentioned in the 4th part of the said schedule shall be the debts and liabilities of the firm hereby constituted. The said A. B. shall be credited in the partnership books with the sum of £—— (being two fifth parts of the net value of the said property and assets after deducting the said debts and liabilities) as so much capital brought in by him, the said C. D. shall be credited with a like sum of £—— (being two other fifth parts thereof) as so much capital brought in by him, and the said E. F. shall be credited with the sum of £——, being the remaining one fifth part thereof, as so much capital brought in by him. Each partner shall be entitled to interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business.

6. If any partner, &c. (*Advances by partners, see Precedent No. I., Art.* 6.)

Profits and losses.

7. The profits of the said business shall belong as to two equal fifth parts thereof to the said A. B., as to two other equal fifth parts thereof to the said C. D., and as to the remaining one equal fifth part thereof to the said E. F., and they shall bear in the same proportion all losses arising from the business.

8. (*Books of account, see Precedent No. I., Art.* 10.)

BETWEEN BREWERS.

9 to 17. (*Same as Articles* 12 *to* 20 *in Precedent No. IV.*)

Either party may nominate a son to succeed him.

18. EACH partner may by will nominate one of his sons to succeed on his death to his share of the partnership and the capital and future profits thereof, and the person so nominated shall have the option of succeeding to the same share upon signifying such option to the surviving partner or partners within six calendar months next after the death of the testator, and the person succeeding as aforesaid shall be and become a partner in the concern in the room and in respect of the share of the testator upon the same terms and conditions and in the same manner as the testator if living would have been and remained a partner therein, or as near thereto as the differences of circumstances will admit, and he shall if required so to do execute a proper deed or deeds, binding himself to observe the said terms and conditions accordingly. But if the person so nominated as aforesaid shall not signify his option to succeed to such share as aforesaid within six calendar months after the death of the testator, then and in such case he shall be deemed to have declined to succeed thereto, and the nomination made by the will of the testator shall be void, and of no effect.

If nominee takes no active part in management, allowance to be made to other partners.

19. IF any person admitted into the partnership under Article 18 shall be unable or unwilling to take an active part in the management of the business, then and in either of such cases the other partner or partners may take upon himself or themselves the entire management of the said business, and in such case such annual sum shall be allowed to the last mentioned partner or partners for his or their additional trouble out of the share of the admitted partner in the profits of the said business as shall be agreed on between the partners or (in case of differences) shall be determined by arbitration under the provision in that behalf hereinafter contained.

Upon the death of partner without having nominated a successor, or upon retirement, &c., share to go to other partners.

20. IF any partner shall die without having nominated a son to be his successor as aforesaid, or if the person so nominated shall decline to succeed to his share as aforesaid [or if any partner shall cease to be a partner by reason of his retirement, expulsion or bankruptcy as aforesaid], then and in such case the share of the deceased partner [so dying or ceasing to be a partner as aforesaid] shall as from the time of his death [or of his ceasing to be a partner] go and belong, &c. (*as in Precedent No. IV., Art.* 22).

21. The surviving or continuing partners or partner succeeding to the share of a deceased or retiring or expelled or bankrupt partner as aforesaid shall pay, &c. (*as in Precedent No. IV., Articles* 23 *or* 23*a*).

Provision for ascertaining value of share.

22, 23. (*Same as Precedent No. IV., Articles* 24, 25.)

In witness, &c.

The Schedule above referred to.

No. VI.

DEED *of* Copartnership *between* Solicitors (*a*).

BETWEEN SOLICITORS.

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c., solicitor (*one partner*), of the one part, and C. D., of, &c., solicitor (*other partner*), of the other part: Whereas the said A. B. has for many years carried on the business of a solicitor at —— aforesaid, and he has agreed to take the said C. D. into partnership in consideration of a premium of £—— to be paid by the said C. D. on the terms and conditions hereinafter appearing: And whereas the said C. D. has before the execution of these presents paid to the said A. B. the sum of £—— by way of premium pursuant to the said agreement, as he the said A. B. doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D. hereby mutually covenant and agree to become and be partners in the profession or business of solicitors upon and subject to the terms, conditions, and stipulations expressed in the following articles (that is to say),—

Recite agreement by one to take other into partnership.

Witnessing part.

Mutual covenants to become partners.

1. The said partnership shall continue for the term of —— years, computed from the —— day of ——: [Provided nevertheless, that if the said A. B. shall be desirous of determining the said partnership, and of such his desire shall give —— calendar months' notice in writing to the said C. D., or leave such notice at the office in which the business of the partnership

Duration of partnership.

(*a*) This deed will require an *ad valorem* stamp of 10*s.* per £100, in respect of the premium.

shall for the time being be carried on, then at the expiration of such notice the said partnership shall cease and determine.]

Style of firm.

2. THE firm and style of the said partnership shall be "B. and D."

Place of business.

3. THE business of the said partnership shall be carried on at the present offices of the said A. B. (which are his private property), and the firm shall, during the said partnership, be tenants of the said offices at the yearly rent of £——, without any deduction for rates, taxes, or other impositions whatsoever (except the landlord's property tax), to be paid by equal half-yearly instalments on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on the —— day of ——. All external repairs and painting shall be done by and at the expense of the said A. B., and all internal repairs and painting shall be done by and at the expense of the firm.

Certain fixtures, &c., to remain property of senior partner.

4. ALL the books, fixtures, and things now being in or about or belonging to the said offices are the property of the said A. B., and shall remain his exclusive property during the said partnership.

Profits, how to be divided.

5. THE partners shall be interested in the profits of the said business in the shares following (that is to say), the said A. B. shall be entitled to three fourths of the said profits, and the said C. D. shall be entitled to one fourth part thereof.

Capital.

6. THE capital (if any) from time to time required for carrying on the said business shall be made up by the said A. B. and C. D. in the same proportions as they are entitled to the profits of the said business as aforesaid, and if either partner shall at any time advance more than his due proportion of capital, the excess shall be considered as a loan from him to the firm, and shall be repaid on demand, and until repayment shall bear interest after the rate of £5 per cent. per annum.

Power to partners to draw out monthly sums.

7. THE said A. B. shall be at liberty to draw out of the funds of the partnership, for his personal expenses, the monthly sum of £——, and the said C. D. shall be at liberty to draw out of the said funds, for his personal expenses, the monthly sum of £——, and the sum to be so drawn out shall be in part or full satisfaction (as the case may be) of the shares of the said A. B. and C. D. respectively in the profits of the said business for that year: PROVIDED ALWAYS, that if in any year the sums drawn out as aforesaid by either partner shall exceed the amount of his

share of the net profits for that year, such partner shall refund the excess as soon as the same shall be ascertained at the taking of the yearly account hereinafter mentioned.

Losses to be borne by partners in proportion to their share of profits.

8. All the expenses of and incidental to the carrying on of the said business, and all losses which may be incurred on account thereof, shall be paid and borne out of the profits of the said business, or in case the same shall be deficient, then shall be paid by the said partners in the proportions following (that is to say), three fourths thereof shall be paid by the said A. B., and the remaining one fourth part thereof by the said C. D.

Books of account.

9. The said partners shall keep proper books of account, and enter therein the particulars of all business done and of all receipts and disbursements, and all such other matters and things as ought to be entered in the said books in the usual and regular course of business of a solicitor, and the said books shall be kept in the offices of the firm, and be open at all convenient times to the inspection of both partners.

Junior partner to give his whole time to business.

10. The said C. D. shall devote the whole of his time to the said business, and diligently employ himself therein and promote to the utmost of his power the benefit and advantage of the said partnership.

Senior partner not to be obliged to attend to business.

11. The said A. B. shall not be obliged to attend to the said business, any further than he shall think proper, and may either actively engage in the said business or abstain wholly or partially from any active part therein, as he shall from time to time think proper.

Partners to be faithful to each other.

12. Each of the partners shall be faithful to the other, and neither of them shall, without the previous consent in writing of the other of them, employ any of the moneys or effects of the said partnership, or engage the credit thereof in any matter or thing, except upon the account and for the benefit of the said partnership, and neither of them shall, without the previous consent in writing of the other of them, enter into any bond, or become otherwise bound, as bail or surety for any person or persons whomsoever, or do or suffer any act or thing whereby the other of the said partners or the moneys or effects of the said partnership shall or may be charged, attached, or affected.

Annual accounts to be taken.

13. On the —— day of —— in every year an account in writing shall be taken of the moneys, credits, and effects, debts and liabilities of the said partnership, which annual account shall

be written in two books, to be respectively signed by the said partners, and after such signing each of the said partners shall take one of the said books into his custody, and shall be concluded by the said account, unless some error shall appear therein, and shall be notified within three calendar months after the taking of such account, and then the said account shall be opened so far only as to rectify such error, and after the making up of every such annual account, all interest (if any) which shall be due to either partner for any money which may have been lent by him to the said firm, shall, in the first place, be taken by such partner, and afterwards the said partners shall divide between them in the proportions aforesaid the net profits of the said business which have accrued or been gained during the then preceding year.

Final account and division at end of partnership.

14. In case the partnership shall determine during the joint lives of the said partners, a general statement and account shall within six calendar months after such determination be made and taken of the partnership affairs and transactions, and of the moneys, credits, and effects, debts and liabilities of the said firm, and the said moneys, credits, and effects shall be applied in manner following (that is to say), first, in payment of the debts and liabilities of the said firm; secondly, in repaying to each partner the capital brought by him into the said business, with all interest due thereon, and the surplus of the said moneys, credits and effects shall be divided between the said partners in such manner that the said A. B. shall receive three fourth parts thereof, and the said C. D. shall receive the remaining one fourth part thereof.

Final account and division on death of a partner.

15. In case either of the said partners shall die during the continuance of the said partnership, the like statement, account, and division shall be made and taken between the surviving partners, and the executors or administrators of the deceased partner, as are by Article 14 directed to be made and taken respectively between the partners on the determination of the said partnership during their joint lives: Provided always, that the surviving partner shall be at liberty to purchase the printed books, office fixtures, and furniture (if any) which shall belong to the firm at a valuation, such valuation to be made by two indifferent persons or their umpire, to be appointed respectively as is hereinafter provided in the case of arbitrators or their umpire upon a

reference to arbitration, and the amount of such valuation shall form part of the partnership funds, and be divided accordingly: PROVIDED ALSO, that all deeds, drafts of deeds, and other papers belonging to clients or otherwise which shall be in the custody of the said partners, or either of them, on account of the firm, shall (subject to the claims of the persons to whom the same shall belong) remain in the hands of or be delivered to the surviving partner.

Power to senior partner to introduce his son into the business.

16. THE said A. B. shall be at liberty at any time during the said term to give the whole or any part of his share in the said business, and the profits thereof, to any son of him the said A. B. who may become a duly qualified solicitor, and to introduce such son into the said partnership business to the extent of the share to be so given to him as aforesaid, and in such case the said introduced partner shall thenceforth during the residue of the said term of —— years carry on the said business in partnership with the said A. B. and C. D., or the said C. D., as the case may be, for the then residue of the said term, upon and subject to the like terms, conditions, and stipulations as are herein contained with regard to the said intended partnership between the said A. B. and C. D., or as near thereto as the circumstances will permit, save and except that the said introduced partner shall be bound to devote the whole of his time to the said business, and diligently employ himself therein, and shall not have the power which is hereinbefore given to the said A. B. of determining the said partnership by notice.

17. (*Arbitration clause, suprà*, p. 620.)

IN WITNESS, &c.

No. VII.

BETWEEN SURGEONS AND APOTHECARIES.

DEED *of* Copartnership *between* Surgeons *and* Apothecaries (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c., surgeon and apothecary (*one partner*), of the one part, and C. D. of, &c., surgeon and apothecary (*other partner*), of the other part: Whereas the said A. B. has for some years past carried on the business of a surgeon and apothecary in the said city of ——, and he now holds the appointment of surgeon to the —— regiment of militia: And whereas the said C. D. has recently been appointed assistant-surgeon to the same —— regiment: And whereas the said A. B. has agreed to admit the said C. D. into partnership, in consideration of the payment by him the said C. D. to the said A. B. of the sum of £—— by way of premium, and also the sum of £——, being one third part of the present value of the horses, gig, harness, surgical instruments, drugs, bottles, and other effects of the said A. B. provided by him for the purposes of his said business, and upon the terms and according to the provisions hereinafter expressed, and the said C. D. has accordingly paid to the said A. B. the said sum of £—— before the execution of these presents, as the said A. B. doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D. do hereby mutually covenant and agree to become and be partners in the business of surgeons and apothecaries upon and subject to the terms, conditions, and stipulations expressed in the following Articles (that is to say):—

Recite agreement by one to admit other into partnership.

Witnessing part.

Mutual covenants to become partners.

Duration of partnership.

1. The said partnership shall continue during the joint lives of the said A. B. and C. D., unless previously determined under the provisions in that behalf hereinafter contained.

Style of firm.

2. The firm of the partnership shall be "B. and D."

Place of business.

3. The business of the said partnership shall be carried out at the surgery in —— street, now occupied by the said A. B., or at such other surgery as shall from time to time be agreed upon by the said partners.

(*a*) This deed will require an *ad valorem* stamp of 10*s.* per £100, in respect of the premium.

BETWEEN SURGEONS AND APOTHECARIES.

Horses, &c., to become joint property.

4. THE horses, gig, harness, surgical instruments, drugs, bottles, and other effects provided by the said A. B. for the purposes of his business (one third part of the value whereof has been so paid by the said C. D. as aforesaid), shall become the joint property of the said partnership.

Each partner to receive profits of his appointment to his exclusive use for certain periods,

5. THE said A. B. shall receive to his own use the whole of the salary, remunerations, or other profits arising from his said appointment as surgeon, and the said C. D. shall receive to his own use the whole of the salary, remunerations, or other profits arising from the said appointment as assistant-surgeon to the said —— regiment of militia during such time as the same shall be embodied, and after the same shall be disembodied during the periods of their being called out for training and exercise.

Division of profits.

6. SUBJECT to the provision contained in Article 5, the said partners shall be interested in the net profits of the partnership business in the shares following (that is to say), the said A. B. shall be entitled to two third parts thereof, and the said C. D. shall be entitled to one third part thereof.

What to be considered profits.

7. THE salaries, remunerations, and other profits to arise from the said respective appointments of the said partners as surgeon and assistant-surgeon to the said —— militia, after the disembodying of the same, except during the periods of their being called out for training and exercise, and the salaries and remunerations and other profits to arise from any appointments which may hereafter be accepted by the said partners, or either of them, and all premiums with apprentices, and all pecuniary presents and gratuities from patients, and all other professional emoluments whatsoever, whether ordinary or extraordinary, which may be received from time to time by the said partners, or either of them (except as provided by Article 5) shall be treated as profits of the said partnership business, and be accounted for accordingly.

Losses to be borne.

8. THE rent, and also the rates and taxes of the surgery at which the said business shall for the time being be carried on and of the stables and buildings at which the said horses and gig now brought into partnership, or any other horses, gigs, or carriages which may hereafter be brought into partnership, shall for the time being be kept, and all expenses of repairs and insurance, and other outgoings relating thereto, and all expenses

of keeping such horses, gigs, and carriages as aforesaid, and of providing surgical instruments, drugs, and other articles and effects required for the purposes of the partnership business, and all salaries and expenses of assistants, apprentices, messengers, and servants connected with the said business, and all other expenses and outgoings whatsoever in any wise relating to the said business, shall be paid out of the profits of the said business, or if the same shall be deficient, two third parts of such deficiency shall be paid by the said A. B., and the remaining one third part thereof shall be paid by the said C. D.

Proper account books to be kept.

9. PROPER books of account shall be kept by the said partners, and entries immediately made therein of all receipts and payments on behalf of the said partnership, and of all such other matters and things as are usually entered in similar books of account (including all receipts in respect of such salaries, remunerations, premiums with apprentices, pecuniary presents, gratuities from patients, and other moneys, as are hereinbefore provided to be treated as part of the profits of the said business): AND SUCH books of account shall be kept in some convenient part of the surgery where the said business shall for the time being be carried on, and each of the said partners shall have free access to inspect and examine the same, and take copies and extracts thereof and therefrom.

Both partners to attend to business.

10. BOTH the said partners shall employ themselves diligently in the business of the said partnership, and use their utmost endeavours to promote the interests thereof.

To be faithful to each other.

11. THE said partners shall be just and faithful to one another and shall furnish to each other when required full accounts in writing of all matters and transactions relating to the said partnership.

Quarterly accounts to be taken.

12. ON the 1st day of January, the 1st day of April, the 1st day of July, and the 1st day of October in every year during the continuance of the said partnership (beginning with the 1st day of April next), a general account in writing shall be made and taken by the said partners of all the moneys, credits, property, and effects, debts, and liabilities of the said partnership, and such account shall be entered in two books, and signed in each book by each of the said partners, and after such signature they shall both be bound by every account so signed, except that if any manifest error be found, then within three calendar

months after such signature thereof as aforesaid such error shall be rectified. After each such general account shall be signed as aforesaid, the net profits of the said partnership business appearing thereby, after providing for all such outgoings and expenses as aforesaid, shall be divided between the said partners in the proportions hereinbefore mentioned in that behalf.

Power to either partner to determine the partnership by notice.

13. EITHER of the said partners shall be at liberty at any time to withdraw from the said partnership by giving to the other of them or leaving for him at the surgery at which the said business shall for the time being be carried on, six calendar months' notice in writing of his intention in that behalf, and at the expiration of such notice the said partnership shall be determined, and the whole of the business thereof shall thenceforth belong to the partner to or for whom such notice shall be given or left as aforesaid: PROVIDED ALWAYS, that the partner so withdrawing from the said business as aforesaid shall not at any time during his life practise as a surgeon or apothecary within a distance of ten miles from ——, and if he shall so practise, shall pay to the other partner, his executors or administrators, the sum of £—— for every month during which or any part of which he shall so practise, by way of liquidated damages.

If either partner breaks articles, other partner may determine the partnership by notice.

14. IF either of the said partners shall commit any breach of the articles herein contained on his part to be observed and performed, and the other of the said partners shall at any time within fourteen days after knowledge or notice of such breach, give notice in writing of his desire that the said partnership shall cease, or leave such notice at the surgery at which the business of the partnership shall for the time being be carried on, then immediately upon such notice being so given or left the said partnership shall cease and determine, and the whole of the business thereof shall thenceforth belong to the partner giving or leaving such notice as aforesaid: PROVIDED NEVERTHELESS, that any dissolution of the said partnership under this present clause shall not prejudice any remedies of the continuing partner for the breach of any of the articles herein contained.

Final account and division on

15. UPON the determination by the said partnership by any means whatsoever, a general and final account in writing shall

termination of partnership.

be made and taken of all the moneys, credits, property, effects, debts, and liabilities of the said partnership up to the time of the determination thereof, and the said moneys, credits, property, and effects shall, after discharging or providing for the debts and liabilities of the said partnership, be forthwith divided between the said partners or their respective executors or administrators, in the proportion in which they are hereinbefore declared to be entitled to the net profits of the said business, and the executors or administrators of a deceased partner shall have full power to concur in such division, and to bind the persons beneficially interested in his estate thereby: PROVIDED ALWAYS, that upon any such determination as aforesaid, the surviving or continuing partner shall be at liberty to take at a valuation the moiety of the deceased or outgoing partner in the stock-in-trade and effects of the said partnership, such valuation to be made by two competent persons or their umpire, to be appointed respectively as is hereinafter provided in the case of arbitrators and their umpire upon a reference to arbitration, and the amount of such valuation shall be paid by the surviving or continuing partner, to the executors or administrators of the deceased partner, or to the outgoing partner (as the case may be), within twelve calendar months from the determination of the said partnership, and shall be secured in the meantime, with interest thereon at the rate of £5 per cent. per annum, by the joint and several bond in a sufficient penalty of the surviving or continuing partner, and a surety to be approved by the executors or administrators of the deceased partner, or by the outgoing partner (as the case may be).

If partnership be determined by death or voluntary withdrawal, continuing partner to pay for goodwill.

16. IN case the said partnership shall be determined by the death or voluntary withdrawal of either partner within ten years from the day of the date of these presents, the surviving or continuing partner shall pay to the executors or administrators of the deceased partner, or to the outgoing partner (as the case may be), the sum of £——, by way of purchase-money for the share of such deceased or outgoing partner in the goodwill of the said business, the same to be paid within twelve calendar months after the determination of the said partnership, and to be secured in the meantime, with interest after the rate aforesaid, by such joint and several bond as aforesaid.

17. (*Arbitration clause*, see *suprà*, p. 620.)

IN WITNESS, &c.

No. VIII.

ADMISSION *of the* SON *of one of two* PARTNERS *to a* PARTICULAR PART *of his* FATHER'S SHARE *in the* BUSINESS, *pursuant to a power contained in the* ARTICLES *of* COPARTNERSHIP.

ADMISSION OF THE SON OF ONE OF TWO PARTNERS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*one of the partners*), of the first part, C. D., of, &c. (*the other partner*), of the second part, and E. B., of, &c. (*son of A. B.*), of the third part: WHEREAS by an indenture dated the —— day of ——, and made between the said A. B. of the one part, and the said C. D. of the other part, each of them the said A. B. and C. D. covenanted with the other of them, his executors and administrators, to be partners in the business of ——, for the term of seven years, to be computed from the —— day of —— then last, upon and subject to the conditions and provisions therein contained, and by the indenture now in recital it was (amongst other things) provided that it should be lawful for the said A. B., at any time or times while engaged in the said partnership, to introduce his son, the said E. B., into the said business as an acting partner, and to assign or otherwise make over to him the whole or any part of the share of the said A. B. in the stocks, moneys, and effects of the said partnership, and the profits of the said business, and that in such case the said E. B should become a partner in the said business as to the part or parts to be assigned to him as aforesaid for the residue of the said term of seven years, upon and subject to the conditions and provisions contained in the said indenture, or as near thereto as circumstances would permit, and should enter into a covenant with the said A. B. and C. D., or with the said C. D. alone as the case might require, to observe and perform the said conditions and provisions so far as the same ought to be observed and performed by him the said E. B.: AND WHEREAS the said A. B. is desirous of introducing his son the said E. B. into the said business as an acting partner, and to give, assign, and make over to him the said E. B. one moiety of the share of him the said A. B. in the stock in trade, moneys, credits, and effects of the said partnership, and the profits of the said business: NOW THIS INDENTURE WITNESSETH, that in order to effec-

Parties.

Recite articles of partnership.

Covenant in articles enabling one of the partners to admit his son to be a partner a to whole or a portion of his share.

Desire to admit son.

Witnessing part.

ADMISSION OF THE SON OF ONE OF TWO PARTNERS.

Admission of son to part of the share of the father.

tuate his said desire, and in pursuance of the power for this purpose given to him by the said recited indenture as aforesaid, the said A. B. doth hereby introduce the said E. B. into the said partnership business as an acting partner, and doth hereby assign unto the said E. B. one moiety of the share of him the said A. B. in the stock-in-trade, moneys, credits, and effects of the said partnership, and in the profits to arise from the said partnership business, To HOLD the same unto the said E. B., absolutely : AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said E. B. hereby covenants with each of them the said A. B. and C. D., that he the said E. B. shall and will henceforth, and during the remainder of the said partnership term of seven years, remain and be a partner with the said A. B. and C. D. in the said business, and shall and will observe and perform the conditions and provisions contained in the said recited indenture of the —— day of ——, so far as the same ought henceforth to be observed and performed by him the said E. B. in respect of the moiety hereby assigned to him of the share of the said A. B. in the said business in the same manner in all respects as the said A. B. would have been bound to observe and perform the same if these presents had not been made.

Second witnessing part.

Covenant by son to observe partnership articles.

IN WITNESS, &c.

No. IX.

DISSOLUTION OF PARTNERSHIP.

DEED *of* DISSOLUTION *of* PARTNERSHIP *where one of the* PARTNERS *retires, and the two others continue the* BUSINESS; ASSIGNMENT *of the* RETIRING PARTNER'S *interest in the* GOODWILL *and* STOCK-IN-TRADE *and* EFFECTS, *and* COVENANT *by him* NOT TO CARRY ON *similar* BUSINESS (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., &c. (*retiring partner*), of the first part, C. D., of, &c.

As to the stamp duty.

(*a*) The question of stamp duty on a deed to carry into effect an arrangement for the retirement of a partner where he is paid the net value of

DISSOLUTION OF PARTNERSHIP.

Recite existing partnership deed.

That an account has been settled between partners.

Agreement that one partner shall retire upon certai terms.

(*one of the continuing partners*), of the second part, and E. F., of, &c. (*other continuing partner*), of the third part: WHEREAS by an indenture dated the —— day of ——, and made, &c., the said A. B., C. D., and E. F. agreed to carry on the business of ——, in partnership in equal shares for the term of —— years, subject to the covenants and provisions contained in the said indenture, and they have carried on the said business accordingly up to the day of the date of these presents: AND WHEREAS a statement and account of the stock-in-trade, moneys, credits, and effects, debts and liabilities of the said partnership have been this day made out, signed and settled between the said A. B., C. D., and E. F., and the share of the said A. B. in the said stock-in-trade, moneys, credits, and effects, after providing for the said debts and liabilities, has been valued at £——, and the share and interest of the said A. B. in the goodwill of the said business has been valued at the further sum of £——, making with the sum of £—— the sum of £——: AND WHEREAS it has been agreed between the parties hereto that the said A. B. shall retire from the said business, and shall accept the sum of £—— in full satisfaction of his share and interest therein and the goodwill thereof and all the stock-in-trade, credits, and effects belonging thereto: AND it has been also agreed that the said sum of £—— shall be paid by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four calendar months respectively, computed from the date of these presents, with interest on the same sum or the instalments thereof for the time being remaining unpaid after the rate of £— per cent. per annum computed from the date of these

payable on deeds of dissolution of partnership.

his share in the assets after allowing for the liabilities is often found an embarrassing one.

It seems from recent cases (Potter *v.* Commissioners of Inland Revenue, 23 L. J. Ex. 345; Christie *v.* Same, L. R. 2 Ex. 46; Phillips *v.* Same, ib. 399), that such a transaction is a sale, and consequently if any deed or instrument is executed in order to vest the property in the continuing partners, such an instrument requires an *ad valorem* stamp duty of 10*s.* per cent. as on a sale. So far as regards houses or land, goodwill, tenant's fixtures, or other property which can only be transferred by deed or a written instrument, the duty cannot be avoided. But where the whole of the assets consists of goods and chattels and book debts, and nothing is paid for the goodwill, an actual assignment by deed seems unnecessary. The chattels pass by delivery, and the book debts can be received by the continuing partners without any power of attorney.

In the above Precedent there is an actual assignment which will require an *ad valorem* duty. See the following Precedents, in which the duty is either wholly or partially avoided.

DISSOLUTION OF PARTNERSHIP.

presents, and that the said C. D. and E. F. shall give and execute to the said A. B. their joint and several bond for securing the payment of the said sum of £—— by such instalments and with such interest as aforesaid, and also for indemnifying him against the debts and liabilities of the said partnership: AND WHEREAS in part pursuance of the said agreement the said C. D. and E. F. have given and executed to the said A. B. their joint and several bond (*b*), bearing even date with these presents, in the penal sum of £——, subject to a condition thereunder written for making the same void, upon payment by the said C. D. and E. F., or one of them, to the said A. B., of the sum of £—— by such instalments, and with such interest as aforesaid, and upon the said C. D. and E. F., indemnifying the said A. B., and his estate and effects, from and against the debts and liabilities of the said partnership and all claims and demands in respect thereof:

Bond by remaining partners to retiring partner.

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement in this behalf the said A. B., C. D., and E. F. do hereby dissolve the said partnership hitherto existing between them so far as regards the said A. B., and the said C. D. and E. F. do hereby mutually covenant that they the said C. D. and E. F., will henceforth be and remain partners in the said business in equal shares for the residue of the said term of —— years upon and subject to the conditions and provisions contained in the said indenture dated the —— day of ——, or as near thereto as the circumstances will permit:

Parties dissolve partnership as to retiring partner, and others agree to remain partners.

Second witnessing part.

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement in this behalf, and in consideration of the premises, the said A. B. doth hereby assign and release unto the said C. D. and E. F., ALL the share and interest of him the said A. B. in the said business and the goodwill thereof and the stock-in-trade, moneys, credits, and effects belonging thereto, TO HOLD the same unto the said C. D. and E. F., absolutely in equal shares:

Retiring partner assigns his share to other partners.

Power of attorney.

AND THE SAID A. B., so far as regards his share hereby assigned or expressed so to be, doth hereby appoint the said C. D. and E. F., and each of them, to be the true and lawful attorneys and attorney of him the said A. B. to ask, demand, sue for, recover,

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(*b*) This bond will require a 10*s*. stamp only. See 33 & 34 Vict. c. 97, sect. 72, sub-sect. 4.

DISSOLUTION OF PARTNERSHIP.

and receive of and from all persons liable to pay or deliver the same, all the debts, sums of money, and effects due and owing and belonging to the said partnership hereby dissolved, or expressed so to be, and on payment or delivery thereof to give and execute receipts, releases, and discharges for the same respectively, and on non-payment or non-delivery thereof, or any part thereof, to institute any actions or other proceedings whatsoever for recovering and compelling payment thereof, and for the purposes aforesaid, or any of them, to use the name of the said A. B., and to do and perform all acts and things in relation to the premises as fully and effectually as he the said A. B. might or could have done the same in his own proper person if these presents had not been executed: AND THE SAID A. B. doth hereby covenant with the said C. D. and E. F., that he the said A. B. will not during his life carry on the business of —— in the town of —— or within —— miles therefrom: AND THIS INDENTURE LASTLY WITNESSETH that in consideration of the premises, the said A. B. doth hereby release the said C. D and E. F. and each of them, and the said C. D. and E. F. do hereby release the said A. B. of and from all covenants and provisions contained in the said indenture of the —— day of —— (*Articles of Partnership*), and all actions, claims, and demands in relation to the late partnership.

IN WITNESS, &c.

No. X.

AGREEMENT *for* DISSOLUTION *of* PARTNERSHIP (*a*).

AGREEMENT FOR DISSOLUTION.

Parties.

THIS AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*retiring partner*), of the one part, and C. D., of, &c., and E. F., of, &c. (*continuing partners*), of the other part (*Recite partnership and that account has been settled and retiring partner's share ascertained, as in last Precedent,*

(*a*) It is supposed in this case that the partnership property consists wholly of chattels and book debts, and that nothing is to be paid for the goodwill.

AGREEMENT FOR DISSOLUTION.

omitting all reference to the goodwill): NOW IT IS HEREBY AGREED between the parties hereto as follows:—

Agreement.

One partner to retire, and others to carry on business.

1. The said A. B. shall, as from the date of these presents, retire from the said business, and the said C. D. and E. F. shall henceforth carry on the same in partnership in equal shares without the said A. B.

Continuing partners to pay to the retiring partner by instalments to be secured by bond.

2. The said C. D. and E. F. shall pay to the said A. B. the sum of £—— by four equal half-yearly instalments at the end of six, twelve, eighteen, and twenty-four calendar months respectively computed from the date of these presents, with interest on the same sum, or the instalments thereof for the time being remaining unpaid after the rate of £5 per cent. per annum computed from the date of these presents, and shall give and execute to him their joint and several bond for securing the payment of the said sum of £——, by such instalments and with such interest as aforesaid, and also for indemnifying him against the debts and liabilities of the said partnership: And the said A. B. shall accept the said sum of £—— to be secured as aforesaid in full satisfaction of all his share and interest in the stock in trade, credits, and effects of the said partnership.

Retiring partner may carry on same business if he thinks fit.

3. Inasmuch (*b*) as in estimating the sum to be paid as aforesaid, nothing was added in respect of the goodwill of the business, the said A. B. shall be at liberty to carry on the like or any other business wherever he may think fit.

A proper deed to be executed.

4. Besides the said bond a proper deed shall be executed between the parties hereto for the purpose of carrying into effect this agreement if and so far as a deed is necessary for that purpose.

As witness, &c.

(*b*) This will be inserted, if so agreed.

No. XI.

DEED *to carry into effect the above* AGREEMENT (*a*).

DEED OF DISSOLUTION.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*retiring partner*), of the one part, and C. D. and E. F., of, &c. (*continuing partners*), of the other part (*Recite partnership, and that an account has been settled and share ascertained, as in last Precedent*): AND WHEREAS by an agreement in writing, dated the —— day of —— last, it was agreed that (*Recite operative part of last Precedent fully*): AND WHEREAS in part pursuance of the said agreement the said C. D. and E. F. have, &c. (*recite bond, suprà*, p. 648): AND WHEREAS all the stock in trade and effects of the said late partnership consisting of personal chattels have been delivered by the said A. B. to the said C. D. and E. F., and they have taken exclusive possession thereof: AND WHEREAS some of the book debts owing to the said late partnership have been received by the said C. D. and E. F., and the remainder have been carried to the account of the said C. D. and E. F. in the partnership books with the consent of the said A. B.: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, IT IS HEREBY DECLARED that the said partnership between the said A. B., C. D., and E. F. has been dissolved so far as regards the said A. B. as from the —— day of —— last: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. hereby releases the said C. D. and E. F., and the said C. D. and E. F. hereby release the said A. B. from all the covenants and provisions contained in the said indenture of the —— day of —— (*Articles of Partnership*), and all actions, claims, and demands for or on account of the same: AND the said A. B. hereby covenants with the said C. D. and E. F., that he the said A. B. will at the request and cost of the said C. D. and E. F., do and execute all such further acts, deeds, and things for effectually

Recite agreement for retirement.

Bond.

That stock in trade has been delivered over to continuing partners.

That book debts have been carried to their account.

Witnessing part.

Declaration of dissolution.

Mutual releases.

Covenant by retiring partner for further assurance.

(*a*) It is considered that this deed will require a common deed stamp only.

DEED OF DISSOLUTION.

vesting in them all the property and assets of the said late partnership, and enabling them to receive the same as by them shall be reasonably required.

IN WITNESS, &c.

No. XII.

CONVEYANCE OF SHARE IN FREEHOLDS AND LEASEHOLDS TO SURVIVING PARTNER.

CONVEYANCE *and* ASSIGNMENT *by the* DEVISEE *and* EXECUTRIX *of a* DECEASED PARTNER *in a* BREWERY *business, of his* SHARE *of* FREEHOLD *and* LEASEHOLD HOUSES *forming part of the* PARTNERSHIP ASSETS *to the* SURVIVING PARTNER, *who* PURCHASES *under a* POWER *in the* PARTNERSHIP DEED (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c., (*devisee and executrix of deceased partner*), of the one part, and C. D., of, &c. (*surviving partner*), of the other part: WHEREAS by an indenture dated, &c., and made, &c., the freehold messuages, lands, and hereditaments comprised in the first part of the schedule hereunder written, were conveyed as to one undivided moiety thereof to the use of the said X. B. (*the deceased partner*), his heirs and assigns, and as to the other undivided moiety thereof, to the use of the said C. D., his heirs and assigns: AND by the same indenture the leasehold messuages, lands, and hereditaments comprised in the second part of the said schedule were assigned unto the said X. B. and C. D., their executors, administrators and assigns, for the residue then unexpired of the several terms of years for which the said premises were respectively holden, subject to the rents and covenants affecting the same respectively: AND WHEREAS by &c. (*Recite a mortgage by X. B. and C. D. of the said freehold and leasehold premises for* £10,000): AND WHEREAS the said X. B. and C. D. carried on the business of common brewers and maltsters at ——, in partnership, and were entitled to the

Recitals.

Conveyance and assignment of freehold and leasehold property to deceased partner and surviving partner as tenants in common in equal shares.

Mortgage.

That deceased partner and surviving partner carried on

(*a*) This is one of five deeds for conveying the share of the deceased partner in the freehold and leasehold property of the partnership. The remaining assets (except moveable chattels passing by delivery, and book debts) are transferred by separate deeds. The whole arrangement is recited in the next Precedent.

property and assets of the said partnership in equal shares, subject to the debts and liabilities thereof: AND WHEREAS the messuages, lands and hereditaments comprised in the schedule hereunder written with other freehold and leasehold messuages, lands, and hereditaments, were part of the property and assets of the said partnership: AND WHEREAS the said X. B. duly made his will dated, &c., and thereby devised all his real and personal estate to his wife, the said A. B., and appointed her sole executrix of his said will: AND WHEREAS (*death of testator and probate of will*): AND WHEREAS the said principal sum of £10,000 (*b*), secured by the said indenture of mortgage, still remains due and owing: AND WHEREAS it has been agreed between the parties hereto that the said C. D. shall purchase the moiety late of the said X. B. deceased, of and in all the freehold and leasehold messuages, lands and hereditaments which constituted part of the partnership property at the time of the death of the said X. B., subject to the incumbrances affecting the same respectively, at or for the price or sum of £26,850 (*c*): AND WHEREAS it is intended that such of the premises agreed to be purchased as aforesaid as are not included in the conveyance and assignment intended to be made by these presents, shall be conveyed and assigned to the said C. D. by four separate indentures bearing even date with these presents: AND WHEREAS for the purposes of the Stamp Acts the said purchase-money of £26,850 has been apportioned between the several premises forming the subject of these presents, and of the said other indentures respectively, and the sum of £9000 (*d*) is the proportion which has been agreed upon to be paid for or in respect of the premises the subject of these presents: AND WHEREAS the said sum of £9000 has been duly paid or satisfied by the said

business as brewers.

That said freeholds and leaseholds (with others) were part of partnership assets.

Will of deceased partner.

That money remains due on mortgage.

Agreement that surviving partner shall purchase moiety of deceased partner.

Arrangement that other freeholds and leaseholds shall be conveyed by four separate deeds.

Apportionment of purchase money for purpose of Stamp Acts.

Payment or satisfaction of purchase money.

(*b*) The other freeholds and leaseholds are also subject to mortgages amounting with the £10,000 to £37,300.

(*c*) It will be seen from the recitals in the next Precedent that this purchase money is arrived at thus:—

Gross value of freeholds and leaseholds	£91,000
Deduct mortgage debts	37,300
	2)53,700
	£26,850

(*d*) The stamp duty will be on £9,000+£5,000 (half of the mortgage debt)=£14,000.

CONVEYANCE OF SHARE IN FREEHOLDS AND LEASEHOLDS TO SURVIVING PARTNER.

C. D. to the said A. B. before the execution of these presents as she the said A. B. doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the sum of £9000 paid or satisfied by the said C. D. to the said A. B. as hereinbefore is mentioned, SHE the said A. B. as beneficial owner hereby conveys unto the said C. D., ALL THAT the one undivided moiety or other the part or share late of the said X. B. deceased, of and in ALL and singular the messuages, lands, tenements, and hereditaments comprised in the first part of the schedule hereunder written and therein particularly described [and ALSO of and in all other (if any) freehold messuages, lands, tenements and hereditaments heretofore forming part of the property and assets of the partnership lately subsisting between the said X. B. and C. D., and not included in the several conveyances made by the several indentures bearing even date herewith hereinbefore mentioned or referred to, or any of them (*e*)], To HOLD the same unto and to the use of the said C. D., in fee simple, SUBJECT nevertheless to the hereinbefore recited indenture of mortgage, and the said principal sum of £10,000 due and owing thereon, and interest due and to become due for and in respect of the same as from the —— day of ——, 18—, the day of the decease of the said X. B.: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration hereinbefore expressed, THE said A. B. as beneficial owner hereby assigns unto the said C. D., ALL THAT the one undivided moiety, or other the part or share late of the said X. B. deceased, of and in ALL and singular the leasehold messuages, lands, and tenements comprised in the second part of the schedule hereunder written and therein particularly described [and also of and in all other (if any) leasehold messuages, lands, and tenements heretofore forming part of the property and assets of the partnership lately subsisting between the said X. B. and C. D., and not included in the assignments made by the several indentures bearing even date herewith hereinbefore mentioned or referred to, or any of them (*f*)]: To HOLD the same unto the said C. D.,

Witnessing part.

Devisee of deceased partner conveys moiety of freeholds

to surviving partner in fee simple subject to mortgage.

Further witnessing part.

Executrix of deceased partner assigns moiety of leaseholds,

(*e*) The words within brackets will be inserted in one only of the conveyances.

(*f*) The words within brackets will be inserted in one of the conveyances only.

for all the residue now unexpired of the several terms of years for which the same are respectively holden, SUBJECT nevertheless to the rents, covenants and conditions affecting the same respectively, and subject also to the said indenture of mortgage, and the said principal sum of £10,000 due and owing thereon, and to the interest due and to become due in respect thereof as from the said —— day of ——, 18—: AND the said C. D. hereby covenants with the said A. B., that he the said C. D., his heirs, executors, administrators, or assigns will, as from the said —— day of ——, 18— (being the day of the decease of the said X. B.), pay the yearly rents and observe and perform the lessee's covenants and conditions respectively reserved and contained by and in the several leases under which the said leasehold premises, one moiety whereof is hereby assigned, are respectively held: AND ALSO will pay the said principal sum of £10,000 secured by the said indenture of mortgage as aforesaid, and all interest due and to become due in respect thereof, as from the said —— day of ——, 18—, and will at all times hereafter keep indemnified the said A. B., and also the estate and effects of the said X. B., deceased, from and against the said rents, covenants, conditions, principal money and interest respectively, and all actions, claims, and demands in anywise relating thereto.

CONVEYANCE OF SHARE IN FREEHOLDS AND LEASEHOLDS TO SURVIVING PARTNER.

unto surviving partner, subject to rents and covenants and to mortgage.

Covenant by surviving partner to indemnify estate of deceased partner, against rents and covenants and mortgage debt.

IN WITNESS, &c.

THE SCHEDULE REFERRED TO BY THE ABOVE-WRITTEN INDENTURE.

No. XIII.

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

ASSIGNMENT (*to accompany last Precedent*) *by* EXECUTRIX *of* DECEASED PARTNER *of a* MOIETY *of the* GOODWILL, *and of certain other* PERSONAL ESTATE, *being the remaining* ASSETS *of the* PARTNERSHIP (*other than* MOVEABLE CHATTELS *passing by delivery and* BOOK DEBTS) *to the* SURVIVING PARTNER; COVENANT *for* FURTHER ASSURANCE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*executrix of deceased partner*), of the one part, and C. D., of, &c. (*surviving partner*), of the other part: WHEREAS, &c. (*Recite partnership deed between X. B. and C. D., including a provision enabling surviving partner to purchase the share of deceased partner at a valuation on giving notice, the purchase-money to be paid by eight half-yearly instalments, and to be secured by bond; Will of X. B., making his wife A. B. sole devisee and executrix; his death and probate of his will*):

Recitals. Partnership deed and will of deceased partner.

Notice by surviving partner to purchase share of deceased partner.

AND WHEREAS by a notice under the hand of the said C. D., dated the —— day of ——, 18—, and addressed to the said A. B. as such executrix as aforesaid, the said C. D. gave to the said A. B. notice that it was his intention to exercise the option given to him by the said indenture as aforesaid of purchasing the share of the said X. B. deceased, of and in the assets and property of the said partnership (*Recite appointment of valuers and their award fixing the purchase-money to be paid by C. D. at* £41,000):

Award of valuers of £41,000.

Payment one instalment of purchase money.

AND WHEREAS the sum of £5125, being the one eighth part of the said purchase-money, which became payable on the —— day of ——, being the expiration of the first half year after the death of the said X. B., has been duly paid by the said C. D. to the said A. B., as she doth hereby acknowledge:

Bond to secure remaining instalments.

AND WHEREAS the said C. D. and G. H., of, &c. (as his surety) have made and executed to the said A. B. their joint and several bond bearing even date with these presents in the sum of £——, subject to a condition for making void the same on payment to the said A. B., her executors, administrators, or assigns of the sum of £35,875, being the remainder of the said purchase-money of £41,000, by seven half-yearly instalments

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

with interest thereon in the meantime after the rate of £5 per cent. per annum, and upon the said C. D. keeping indemnified the said A. B., and the estate and effects of the said X. B. deceased from and against all debts and liabilities of the said late partnership: And whereas for the purposes of the said award the messuage or brewery and dwelling-house in or upon which the said business has been carried on, and the brewhouses, warehouses, storehouses, granaries, malthouses, and other offices at —— belonging to the said business, and the freehold and leasehold messuages or public houses and other messuages, lands, and hereditaments, forming part of the said partnership estate, and the coppers, vats, barrels, casks, waggons, carts, drays, implements, horses, plant, utensils, beer, ale, porter, malt, hops, and other stock in trade belonging to the said partnership business, and the book debts and other effects constituting the assets of the said partnership (other than cash), were valued by the said (*valuers*) at the sum of £166,760, making with a sum of £590 cash belonging to the said firm, the sum of £167,350: And whereas in the said valuation the several items constituting the property of the said partnership were valued as follows: 1st, the freehold and leasehold messuages, lands, and hereditaments (including the trade and other fixtures attached thereto) were valued at the sum of £91,000, and such valuation was made without any deduction for the mortgages affecting the same; 2nd, the goodwill of the said business was valued at the sum of £10,000 pursuant to an arrangement in that behalf made between the partners during the life of the said X. B.; 3rdly, five shares in the —— Gas Company standing in the name of the said X. B. alone, but which were part of the partnership property, were valued at £200; 4thly, the policies of assurance and rights mentioned in the 1st schedule to these presents were valued at £450; 5thly, the mortgage debts mentioned in the 2nd schedule to these presents were estimated at the sum of £8800, being the full amount thereof; 6thly, the book debts owing to the said partnership were ascertained (after allowing for bad and doubtful debts) to amount to the sum of £7240; and 7thly, the barrels, casks, waggons, drays, horses, implements, plant, utensils and materials, stock of beer, ale, porter, malt, hops, and other stock in trade belonging to the said business, were valued at the sum of £49,070: And whereas it appears from the books of the said

That for purposes of award the property and assets of the partnership were valued at £167,350.

That items were separately valued.

Freeholds and leaseholds at £91,000.

Goodwill at £10,000.

Gas shares at £200.

Policies and rights at £450.

Mortgage debts at £8800.

Book debts at £7240;

and plant and stock in trade at £49,070.

That surpartnership that the said C. D. had brought into the business the sum of £5573 over and above his moiety of the capital thereof, for which sum of £5573 he was entitled to be deemed a creditor of the said firm under clause —— of the said articles of partnership: And whereas the debts and liabilities of the said firm (including therein the said sum of £5573) were ascertained by the said valuers to amount to £85,350, which, being deducted from the aforesaid sum of £167,350, left the sum of £82,000 as the net value of the partnership property and assets, after allowing for debts and liabilities, and the sum of £41,000 as the net value of the moiety of each partner therein: And whereas the said freehold and leasehold messuages, lands, and hereditaments were at the death of the said X. B. subject to mortgages thereon amounting to £37,300, which sum is part of the said sum of £85,350: And whereas it has been arranged and agreed between the parties hereto that the said sum of £41,000 paid or secured to be paid to the said A. B. as aforesaid as and for the share of the said X. B. deceased, in the property and assets of the said partnership pursuant to the aforesaid award, shall be apportioned between the several items constituting the said assets and property upon the basis of the aforesaid valuation: And whereas the sum of £37,300, being the amount of the mortgage debts affecting the said freehold and leasehold premises, being deducted from the sum of £91,000 at which the said premises were valued as aforesaid, leaves the sum of £53,700 as the net value of the said premises, and the sum of £26,850 as the net value of one moiety thereof: And whereas it has accordingly been agreed that the said sum of £26,850, part of the said sum of £41,000 shall be deemed the purchase or consideration money for the moiety of the said X. B. deceased, in the said freehold and leasehold premises, subject to a moiety of the mortgage debts affecting the same, and that the sum of £5000 (other part of the said sum of £41,000), shall be deemed the purchase or consideration money for the moiety of the said X. Y. deceased, in the goodwill of the said business, and that the sum of £100 (other part of the sum of £41,000) shall be deemed the purchase or consideration money for the moiety of the said X. Y. deceased, in the said —— gas shares, and that the sum of £225 (other part of the said sum of £41,000) shall be deemed the purchase or consideration money for the moiety of

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

viving partner was creditor for advances made beyond his share of capital.

That debts and liabilities came to £85,350, leaving £82,000 net value of assets, and £41,000 value of moiety.

That freeholds and leaseholds were subject to mortgages for £37,300.

Agreement that said £41,000 should be apportioned according to said valuations.

That £26,850 was accordingly net value of moiety of freeholds and leaseholds.

Agreement that £26,850 should be deemed consideration for same.

£5000 for moiety of goodwill,

£100 for moiety of gas shares,

£225 for moiety of policies,

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

—and remainder of £41,000 for moiety of book debts, plant, &c., after allowing for debts.

Conveyance and assignment of moiety of freeholds and leaseholds by five separate deeds.

Transfer of gas shares.

Delivery of plant, stock in trade and moveable effects.

That mortgage debts had become vested in surviving partner.

That book debts had been or would be received by surviving partner.

Witnessing part.

Executrix of deceased partner in consideration of £5000 and £225 assigns moiety of goodwill

the said X. Y. deceased in the policies of assurance and rights comprised in the first schedule to these presents, and that the remainder of the said sum of £41,000 shall be deemed the consideration money for the moiety of the said X. B. deceased in the mortgage debts mentioned in the second schedule hereto, and in the book debts, stock in trade and remaining assets of the said partnership, after allowing for the debts and liabilities of the said partnership other than the mortgage debts affecting the said freehold and leasehold premises: AND WHEREAS the moiety or other the part or share of the said X. B., deceased, of and in the said freehold and leasehold premises, has been conveyed and assigned by the said A. B. unto the said C. D., by five several indentures bearing even date with these presents, in consideration of the several sums of money amounting together to the sum of £26,850 in the same indentures respectively expressed to have been paid or satisfied by the said C. D. to the said A. B., the said sums of money being in fact part of the said sum of £41,000: AND WHEREAS the said —— gas shares have been transferred by the said A. B. unto the said C. D. by a proper deed for that purpose bearing even date with these presents in consideration of the sum of £100 (*a*) (being other part of the said sum of £41,000): AND WHEREAS the barrels, casks, waggons, carts, drays, horses, implements, plant, utensils, materials, stock of beer, ale, porter, malt, hops, and other stock in trade, belonging to the said business, being in the nature of personal chattels, have been delivered and handed over to the said C. D.: AND WHEREAS the mortgage debts mentioned in the second schedule to these presents have become vested in the said C. D., as the survivor of the mortgagees therein named: AND WHEREAS the greater part of the book debts owing to the said late firm, have been received by the said C. D., and the remainder thereof will be received by him as surviving partner: NOW THIS INDENTURE WITNESSETH that in consideration of the sums of £5000 and £225 (other part of the said sum of £41,000 paid or secured to be paid as aforesaid) the said A. B. as beneficial owner hereby assigns unto the said C. D., ALL THAT the moiety or other the share and interest late of the said X. B. deceased, of and in ALL THAT the goodwill of the said partnership busi-

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(*a*) This transfer deed should be stamped with an *ad valorem* stamp on £100.

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

and policies of assurance unto surviving partner.

Further witnessing part.

Executrix acknowledges receipt of £41,000 in full satisfaction of share of deceased partner in assets,

and covenants for further assurance.

ness, and of and in all those policies of assurance, rights and things comprised in the first schedule to these presents, To HOLD the same unto the said C. D. absolutely: AND THIS INDENTURE ALSO WITNESSETH that the said A. B. hereby acknowledges and declares that the said sum of £41,000, part whereof has been paid, and the residue whereof is secured to be paid as aforesaid, is accepted by her, the said A. B., in full satisfaction of the share of the said X. B. deceased, in all the property and assets of the said partnership, and all claims and demands relating thereto: AND the said A. B. hereby covenants with the said C. D. that she the said A. B., her executors, administrators, or assigns, will from time to time, and at all times, upon the request and at the cost of the said C. D., his executors, administrators, or assigns, make, do, and execute all such further acts, deeds, and things, for effectually vesting in him or them all the property and assets of the said late partnership, and enabling him or them to receive the same as by him or them shall be reasonably required (*a*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Two Policies of life assurance and certain exclusive rights of supplying public houses with beer, &c.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

The principal sum of £—— secured by an indenture dated, &c., and made, &c.

The principal sum of £—— secured by, &c.

The principal sum of £—— secured by, &c.

All the above deeds provide that the moneys thereby secured shall be payable to the survivor of the mortgagees, but the said moneys in fact form part of the partnership assets.

(*a*) It is considered that the stamps on this deed should be an *ad valorem* duty at 10*s.* per £100 on £5225, the consideration for the moiety of the goodwill and policies, &c, and a common deed stamp (10*s.*).

MEMORIALS.

No. I.

FORM *of a* MEMORIAL, *of* DEED *of* CONVEYANCE *of* FREEHOLDS (*a*).

OF A CONVEYANCE OF FREEHOLDS.

A MEMORIAL to be registered of an indenture, bearing date the —— day of ——, and made between A. B., of, &c., of the

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Particulars to be observed in drawing memorials.

(*a*) The particulars to be observed in drawing memorials are as follows :—

The date of the deed or will must be mentioned, together with the names and additions of all the parties, and of the devisor (in the case of a will), and of all witnesses to the deed or will, and the places of their abode.

The description of the premises contained in the operative part of the deed should, in all cases, be set out in the memorial, and also that contained in any recital, to which the operative part of the deed has reference.

How indorsements should be described.

When a deed is indorsed on a former deed, and the parties and property are described by reference to the former deed, the memorial should give the dates of and parties to both deeds, together with the description of the premises from both deeds, and should state that the imported description is taken from the source referred to (Reg. *v.* Registrars of Middlesex, 15 Q. B. 967 ; 19 L. J. Q. B. 537).

Memorials how to be executed and attested.

Memorials must be under the hand and seal of some or one of the grantors, or some or one of the grantees, his or their heirs, executors or administrators, guardians or trustees, attested by *two witnesses*, one whereof to be one of the witnesses to the execution of the deed, which witness must, upon oath, prove the execution of the memorial and the deed ; and in the case of wills, the memorial must be under the hand and seal of some or one of the devisees, his or their heirs, executors, or administrators, guardians or trustees, attested by two witnesses, one whereof shall, upon his oath prove the signing and sealing of such memorial, and shall indorse a certificate thereof on every such memorial, and sign the same.

It is said that the one of the two attesting witnesses to the memorial should be a witness who attested the execution by the *granting* party, but this is doubtful. *See* Jack *v.* Armstrong, 1 Hud. & B. 727 ; Dart. 626.

Stamps on memorials.

By 33 & 34 Vict. c. 97, the following stamp duty is imposed on every memorial to be registered, pursuant to any Act of Parliament made, or to be made for the public registering of deeds and conveyances in England or Ireland (that is to say):—

Where the instrument registered is chargeable with any duty not amounting to 2*s*. 6*d*.	The same duty as the registered instrument.
In any other case	2*s*. 6*d*.

OF A CONVEYANCE OF FREEHOLDS.

one part, and C. D., of, &c., of the other part: WHEREBY, for the considerations in the now memorialising indenture mentioned, the said A. B. did grant to the said C. D. ALL (*parcels, &c., as in the indenture, omitting the general words*): TO HOLD, &c., WHICH said indenture, as to the execution thereof by the said A. B., is witnessed by E. F. of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H. of, &c.

AS WITNESS the hand and seal of the said C. D.

Signed and sealed in the
presence of C. D.

(*Two witnesses.*)

No. II.

OF AN ASSIGNMENT OF LEASEHOLDS.

FORM *of* MEMORIAL *in* CASES *where the premises intended to be affected are expressed in the operative part of the* DEED *by reference to preceding recitals.*

A MEMORIAL to be registered of an indenture, bearing date the —— day of ——, and made between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. WHEREBY, after reciting an indenture, dated the —— day of ——, purporting to be a lease of ALL THAT (*here set out the description verbatim from the recitals referred to by the operative part of the deed*): AND also reciting another indenture, dated the —— day of ——, purporting to be a lease of all that (*the parcels*), for the considerations in the now memorialising indenture mentioned, the said A. B. did assign to the said C. D. the several pieces or parcels of ground, with the messuages or tenements thereupon erected, and all and singular other the premises comprised in and demised by the several thereinbefore in part recited indentures of lease, with the appurtenances: TO HOLD, &c.; WHICH said indenture as to the execution thereof by the said A. B. is witnessed by

E. F. of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H. of, &c.

OF AN ASSIGNMENT OF LEASEHOLDS.

As WITNESS the hand and seal of the said C. D.

Signed and sealed in the
presence of C. D.
(*Two witnesses.*)

No. III.

FORM *of* MEMORIAL *of an* ENDORSED DEED.

OF AN ENDORSED DEED.

A MEMORIAL to be registered of an indenture, dated the —— day of ——, 18— (endorsed on an indenture dated the —— day of ——, 18—, and made between A. B., of, &c., of the one part, and C. D., of, &c., of the other part, a memorial whereof was registered on —— day of ——, 18—, B. No. ——). THE INDENTURE of which this is a memorial is made between the therein within-named C. D., of the one part, and E. F., of, &c., of the other part, whereby, for the considerations therein mentioned, the said C. D. did assign unto the said E. F. ALL AND SINGULAR the messuages or tenements, hereditaments and premises comprised in and demised by the therein within-written indenture with the appurtenances, and which premises are in the therein within-written indenture described as follows, that is to say: All that, &c., (*parcels*,) To HOLD, &c.; WHICH indenture of assignment as to the execution thereof by the said A. B. is witnessed by E. F., of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H., of, &c.

As WITNESS the hand and seal of the said C. D.

Signed and sealed in the
presence of C. D.
(*Two witnesses.*)

No. IV.

OF A WILL.

FORM *of* MEMORIAL *of a* WILL.

A MEMORIAL to be registered of the last will and testament of A. B., late of, &c., deceased, dated the —— day of ——, whereby he devised and bequeathed all his real and personal estate and effects unto and to the use of C. D., of, &c., and E. F., of, &c., upon the trusts therein expressed and declared concerning the same, WHICH will was duly executed in the presence of (*witnesses*).

AS WITNESS the hand and seal of the said C. D., one of the said devisees.

Signed and sealed in the
presence of C. D.
(*Two witnesses.*)

NOTICES, ETC.

No. I.

NOTICE *to quit by a* LANDLORD *to a* TENANT *from year to year.*

BY LANDLORD TO TENANT.

You are hereby required to quit and deliver up on the —— day of ——, 18— [or on other the day on which the current year of your tenancy will expire next after the end of half a year (*a*) from the time of your being served with this notice (*b*)], the possession of the messuage, &c. (*describe the property shortly*), which you now hold of —— (*landlord*). Dated the —— day of ——.

A. B. (*agent for the said landlord*).

To C. D. (*tenant*).

No. II.

NOTICE *to quit by* TENANT *from year to year to* LANDLORD.

BY TENANT TO LANDLORD.

I HEREBY give you notice that I shall quit and deliver up on the —— day of ——, 18— [or otherwise on the day on which the current year of my tenancy will expire next after the end of half a year (*a*) from the time of your being served with this notice (*b*)]

(*a*) If a year's notice is requisite (see the Agricultural Holdings (England) Act, 1875, sec. 51), substitute here "a year" for "half a year."

(*b*) The words in brackets will be inserted wherever there is any doubt as to the day on which the tenancy commenced.

BY TENANT TO LANDLORD.

the possession of the messuage, &c. (*describe the property shortly*), which I now hold of you as a yearly tenant. Dated the —— day of ——.

A. B. (*tenant*).

To C. D. (*landlord*).

No. III.

TO DETERMINE A LEASE.

NOTICE *by* TENANT *to determine a* LEASE.

I HEREBY give you notice that, in pursuance of the power for this purpose given to me by an indenture of lease dated the —— day of ——, and made between you of the one part, and me of the other part, it is my intention to determine the lease thereby made on the —— day of —— next, and I shall therefore quit and deliver up possession to you of the messuage and premises situate at, &c., comprised in the said indenture of lease on the said —— day of ——.

As WITNESS my hand this —— day of ——.
To C. D. (*landlord*). A. B. (*tenant*).

No. IV.

BY LESSEE TO LESSOR.

NOTICE *by* LESSEE *to* LESSOR *of an assignment of leasehold premises.*

I HEREBY give you notice that, by an indenture dated the —— day of ——, and made between myself of the one part, and C. D., of, &c., of the other part, I have assigned all the premises comprised in the indenture of lease dated the —— day of ——, and made between you of the one part, and me of the other part, unto the said C. D. for the residue of the term thereby granted.

As WITNESS my hand this —— day of ——.
To G. H. (*original lessor*). A. B. (*assignor.*)

No. V.

NOTICE *by a* LESSOR *to his* LESSEE *requiring him to put the* PREMISES *in* REPAIR *pursuant to a* COVENANT *contained in the* LEASE.

TO TENANT TO REPAIR.

I HEREBY give you notice and require that in pursuance of the covenant in that behalf contained in the indenture of lease dated the —— day of ——, under which you hold the messuage and premises, No. &c. (*describing the premises shortly*), you do and execute within six calendar months from the date hereof, the repairs in and upon the said messuage and premises, which are specified in the schedule to this notice.

To C. D. (*tenant*). A. B. (*landlord*).

THE SCHEDULE ABOVE REFERRED TO.

No. VI.

NOTICE *by* MORTGAGEE *to* TENANT *not to pay rent to* MORTGAGOR.

BY MORTGAGEE TO TENANT.

I HEREBY give you notice that, by an indenture dated the —— day of ——, and made between A. B., of, &c., of the one part, and me of the other part, the messuage and piece of ground situate at ——, and now in your possession, were conveyed by the said A. B. to me, in fee simple, by way of mortgage, which mortgage is still subsisting, and I therefore require you to pay to me, and not to the said A. B., the rent hereafter to accrue due in respect of the said premises.

AS WITNESS my hand the —— day of ——.

To C. D. (*tenant*). A. B. (*mortgagee*).

No. VII.

BY MORTGAGOR TO PAY OFF.

NOTICE *by* MORTGAGOR *to pay off at the expiration of* SIX MONTHS.

I HEREBY give you notice that I intend, at the expiration of six calendar months from the date hereof, to pay the principal moneys and interest due and owing to you from me, on the security of a certain indenture dated the —— day of ——, and made between me of the one part, and you of the other part.

AS WITNESS my hand this —— day of ——.

To C. D. (*mortgagee*). A. B. (*mortgagor*).

No. VIII.

BY MORTGAGEE OF INTENTION TO SELL.

NOTICE *by* MORTGAGEE *to* MORTGAGOR *of intention to exercise* POWER *of* SALE.

I HEREBY require you to pay to me, at the expiration of six [*or* three] (*a*) calendar months from the date of this notice, the principal sum of £—— secured by a certain indenture dated the —— day of ——, and made between you of the one part, and me of the other part, and all interest then due thereon, and I hereby give you notice that if you make default in such payment I shall proceed to sell the hereditaments and premises comprised in the said indenture, in pursuance and exercise of the power for that purpose vested in me.

AS WITNESS my hand this —— day of ——.

To C. D. (*mortgagor*). A. B. (*mortgagee*).

(*a*) Under the Conveyancing Act, 1881, sect. 20, three months' notice is sufficient.

No. IX.

NOTICE *by* MORTGAGEE *of intention to exercise* POWER *of* SALE, *to be left on the property, it not being known where the* MORTGAGOR *is.*

BY MORTGAGEE OF INTENTION TO SELL.

To C. D. (*mortgagor*), if living, or his legal personal representative, and all other persons whom this notice may concern.

I hereby require the payment to me of the principal sum of £—— secured by an indenture dated, &c., and made, &c. (*state date and parties*), and all interest due thereon, And I give notice that if the same is not paid to me within six [*or* three] calendar months after the date of this notice I shall proceed to sell the hereditaments comprised in the said indenture in pursuance and exercise of the power for that purpose vested in me.

AS WITNESS my hand this —— day of ——, 18—.

A. B. (*mortgagee*).

No. X.

NOTICE *by* SECOND MORTGAGEE *to a* FIRST MORTGAGEE.

BY SECOND MORTGAGEE TO FIRST MORTGAGEE.

I HEREBY give you notice that, by an indenture dated the —— day of ——, and made between A. B., of, &c., of the one part, and me of the other part, the messuage, lands, and hereditaments, situate, &c., now in mortgage to you from the said A. B., have been conveyed by the said A. B. to me in fee simple, by way of mortgage for securing the sum of £1000 and interest.

AS WITNESS my hand this —— day of ——.

To C. D. (*first mortgagee*). E. F. (*second mortgagee*).

No. XI.

BY MORTGAGEE UNDER BILL OF SALE.

NOTICE *by* MORTGAGEE *under a* BILL *of* SALE *demanding payment of Principal and Interest.*

I HEREBY demand payment, within twenty-four hours [*or* within —— days, *as the case may require*] from the time when this notice is given to you or left at your house, of the sum of £—— due to me upon the security of a certain indenture dated the —— day of ——, and made between you of the one part, and me of the other part, together with the sum of £—— for interest from the —— day of —— last, AND I authorize you to pay the said money either to me personally at my house at —— or to my account at the —— Bank at —— [or to my solicitors, Messrs. ——, at their office at ——, whose receipt shall be a sufficient discharge to you], AND I GIVE YOU NOTICE that if you make default in paying the money within the time aforesaid I shall proceed to seize and take possession of the chattels and things comprised in the said indenture.

As WITNESS my hand this —— day of ——.

To C. D. (*mortgagor*). A. B. (*mortgagee*).

No. XII.

TO PRODUCE DEED.

NOTICE *to produce* TITLE DEEDS.

I HEREBY give you notice to produce to Mr. —— (*solicitor*), of ——, solicitor, on the —— day of —— next, on his application at your residence in ——, all the deeds and writings mentioned or referred to in a certain indenture, dated the —— day of ——, by which the same were covenanted to be produced by you to me [*or* by which you acknowledge my right to the production thereof]: AND I hereby undertake to pay the reasonable costs which may be incurred in or about the production of the said deeds and writings on your informing me of the amount thereof.

As WITNESS my hand this —— day of ——.

To C. D. (*covenantor*). A. B. (*covenantee*).

No. XIII.

NOTICE *by* LESSEE *to* LESSOR *of Election to Purchase the* FREEHOLD *and* INHERITANCE *of Premises, pursuant to a Power contained in the Lease for this purpose* (*a*).

OF ELECTION TO PURCHASE

I HEREBY give you notice that, pursuant to the power for this purpose given to me by an indenture of lease, dated the —— day of ——, whereby certain hereditaments and premises, situate, &c., were demised by you to me for the term of —— years, I elect and agree to purchase the said hereditaments and premises, and the inheritance thereof in fee simple, at the price of £——, and to pay the purchase-money, and in all respects to comply with the terms prescribed by the said indenture of lease in respect of such purchase by me; and I request you, on or before the expiration of one calendar month from the date hereof, to make out and deliver to me an abstract of the title to the said hereditaments and premises, according to the stipulation for this purpose contained in the said indenture of lease.

As WITNESS my hand this —— day of ——.

To A. B. (*lessor*). C. D. (*lessee*).

No. XIV.

NOTICE *by* EXECUTORS *to the* CREDITORS *of a* TESTATOR *to send in particulars of their Debts.*

BY EXECUTORS TO CREDITORS.

A. B., deceased.—PURSUANT to an Act of Parliament made and passed in the twenty-second and twenty-third years of the reign of her present Majesty, cap. 35, intituled "An Act to further amend the Law of Property and to relieve Trustees" (*b*), notice

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(*a*) *Suprà*, p. 55.

(*b*) By 22 & 23 Vict. c. 35, s. 29, it is provided that where an executor or administrator shall have given such or the like notices as in the opinion of the court in which such executor or administrator is sought to be charged

Executor after advertising for

BY EXECUTORS TO CREDITORS.

is hereby given that all creditors and persons having any claims or demands upon or against the estate of A. B., late of ——, in the county of ——, deceased (who died on or about the —— day of ——, and whose will was proved by C. D., of ——, and E. F., of ——, the executors therein named, on the —— day of ——, in the principal registry of the Probate Division of the High Court of Justice), are hereby required to send in the particulars of their claims and demands to the said C. D. and E. F., or to the undersigned, their solicitors, on or before the —— day of ——, and notice is hereby also given that after that day the said executors will proceed to distribute the assets of the deceased among the parties entitled thereto, having regard only to the claims of which the said executors shall then have notice, and that they will not be liable for the assets or any part thereof so distributed to any person of whose debt or claim they shall not then have had notice. Dated this —— day of ——.

M. N. and O. P. (*solicitors for the executors*).

No. XV.

NOTICE BY ASSIGNEE OF ASSIGNMENT.

NOTICE *by* ASSIGNEE *of the* ASSIGNMENT *of a reversionary Interest in Personalty to the* TRUSTEES *in whose Names the Property stands.*

Notice to trustees of assignment

I, G. H., of, &c., HEREBY give you notice that by an indenture dated the —— day of ——, and made between A. B., of, &c., of

creditors may distribute assets without liability to any creditors who do not give notice of their claims.

would have been given by the Court of Chancery in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively.

the one part, and me of the other part, ALL that the one equal third part or share of the said A. B., under or by virtue of the will of L. M., late of ——, deceased, dated the —— day of —— (expectant on the decease or marriage, whichever shall first happen, of N. O.), of and in the sum of £—— £3 per Cent. Consolidated Annuities, and of and in all other the residuary personal estate and effects of the said L. M., deceased, and the proceeds thereof, and of and in the stocks, funds, and securities in or upon or of which the same or any part thereof may be invested or consist, and the income and accumulations thereof respectively, have been assigned by the said A. B. unto me, by way of mortgage, for securing the sum of £—— and interest thereon, as therein mentioned.

NOTICE BY ASSIGNEE OF ASSIGNMENT. by way of mortgage.

As WITNESS my hand this —— day of ——.

G. H. (*mortgagee*).

To Messrs. X. Y. and Y. Z. (*trustees of will*).

No. XVI.

NOTICE *by one* PARTNER *to another, to determine a* PARTNERSHIP *under a power.*

TO DETERMINE PARTNERSHIP.

PURSUANT TO THE POWER for this purpose contained in certain articles of partnership, dated the —— day of ——, and made between you of the one part, and me of the other part, I hereby give you notice of my wish and intention that the partnership now subsisting between us under the said articles shall cease and determine at the expiration of six calendar months computed from the date hereof.

As WITNESS my hand this —— day of ——.

A. B. (*partner*).

To C. D. (*other partner*).

No. XVII.

OF DISSOLUTION OF PARTNERSHIP.

NOTICE *of* DISSOLUTION *of* PARTNERSHIP *to be inserted in the London Gazette.*

NOTICE IS HEREBY GIVEN, that the partnership which has for some time past been carried on by A. B. and C. D. under the firm of ——, at ——, in the trade or business of ——, was this day dissolved by mutual consent.

AS WITNESS our hands.

A. B.
C. D.

No. XVIII.

DIRECTION TO TRUSTEES TO CHANGE INVESTMENTS.

DIRECTION *by* HUSBAND *and* WIFE, *whose consent is made requisite to any change of* INVESTMENT, *to sell out* STOCK *and to advance the produce at interest on* MORTGAGE *of a* REAL ESTATE.

Direction to trustees to sell out stock and advance moneys on mortgage.

WE, A. B., of, &c., and C. his wife, hereby request that under the power for this purpose given to you by an indenture dated the —— day of —— (being the settlement made on our marriage), you will forthwith by the sale of a competent part of the sum of £1000 Consolidated £3 per Cent. Annuities, now standing in your names in the books of the Governor and Company of the Bank of England as trustees of the said indenture, raise the sum of £—— sterling, and invest the same on mortgage of the farm and lands called the —— farm, situate in the parish of ——, in the county of ——, belonging to E. F., of, &c., at interest after the rate of £4 per cent. per annum.

AS WITNESS our hands this —— day of ——.

A. B. and C. B. (*husband and wife*).

To L. M. and N. O. (*trustees of settlement*).

No. XIX.

DIRECTION *by the* TENANT *for* LIFE *under a settlement to the* TRUSTEES *to sell* LANDS *under a power of sale and exchange, and to* INVEST *the* PRODUCE *in the* PURCHASE *of other* LANDS.

DIRECTION TO TRUSTEES TO SELL LANDS.

I, A. B., of, &c., hereby request that under the power of sale contained in an indenture of settlement dated the —— day of ——, and made in contemplation of my marriage with ——, you will forthwith sell the lands and hereditaments comprised in the said indenture, or a competent part thereof, and will lay out and invest the moneys arising from such sale, or a sufficient portion thereof, in the purchase of certain lands and hereditaments in the parish of ——, in the county of ——, now the property of L. M., of, &c., Esq., to whom the same were conveyed by an indenture dated the —— day of —— and made between (*parties*).

As WITNESS my hand this —— day of ——.

A. B. (*tenant for life*).

To E. F. and G. H. (*trustees of settlement*).

No. XX.

DIRECTION *by* HUSBAND *and* WIFE *to* TRUSTEES *to make immediate payment of part of* DAUGHTER'S *expectant share in the* TRUST MONEYS, *pursuant to a power of advancement.*

DIRECTION TO TRUSTEES TO PAY PART OF DAUGHTER'S SHARE.

WE, A. B., of, &c., and C. his wife, hereby request that, under the power for this purpose contained in a certain indenture, dated, &c., and made, &c. (being the settlement made on our marriage), you will forthwith advance and pay the sum of £—— out of the trust moneys and property comprised in the said indenture of settlement unto our daughter ——, as an advancement for her benefit in the prospect of the marriage now intended to be shortly solemnised between her and ——.

As WITNESS our hands this —— day of ——.

A. B. and C. B. (*husband and wife*).

To E. F. and G. H. (*trustees*).

No. XXI.

BY TENANT FOR LIFE TO TRUSTEES OF INTENTION TO SELL, ETC.

NOTICE *by* TENANT *for* LIFE *to the* TRUSTEES *and their* SOLICITOR *of* INTENTION *to make a* SALE, EXCHANGE, PARTITION, LEASE *or* MORTGAGE *of* SETTLED LAND *under the* POWERS *of the* SETTLED LAND ACT, 1882 (*x*).

To C. D., of, &c., E. F., of, &c., and I. K., of, &c., the trustees for the purposes of the Settled Land Act, 1882, of an indenture of settlement dated, &c., and made, &c. (*State date and parties*).

And to L. M., the solicitor of the above-named trustees, whose place of business is, &c. (*state place of business*).

Notice of intention to sell generally.

I, A. B., of, &c., being tenant for life under the above-mentioned indenture, hereby give you notice that I intend on or after the expiration of one calendar month from the posting of this notice, and by virtue of the power for this purpose vested in me by the said Act to sell the hereditaments mentioned in the schedule hereto, being part of the hereditaments settled by the said indenture.

or,

To exchange.

to make an exchange of the hereditaments mentioned in the schedule hereto, being part of the hereditaments settled by the said indenture, for hereditaments belonging to X. Y., of, &c., situate in the same parish, [and to raise the money (if any) which may be required for equality of exchange by a mortgage of all or some of the hereditaments to be received in exchange].

or,

To make partition.

to make a partition of the undivided moiety settled by the said indenture of and in all the hereditaments therein in that

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What should be stated in the notice to be given under s. 45 of the Settled Land Act.

(*x*) See sect. 45. As the notice must be given one calendar month before a contract is signed, it can only be given in general terms. Neither the name of the purchaser, nor the price, can be stated with certainty, as even if a negotiation has been entered into with a particular person and the price may appear to have been arranged, it is possible that another purchaser may be substituted or the terms varied after the notice has been given. It can, therefore, only state with certainty what is the property intended to be sold, and this should be sufficiently described to enable the trustees to identify it readily, but it will not be necessary to describe every field with the same particularity as would be proper in a conveyance. Thus it will be sufficient to say "the farm and land called ——, situate in, &c., in the occupation of ——, and containing ——, or thereabouts."

The notice must be sent separately to each of the trustees in a registered letter addressed to his usual or last known place of abode in the United Kingdom, and also to the solicitor of the trustees if known to the tenant for life, addressed to his place of business.

BY TENANT FOR LIFE OF TRUSTEES OF INTENTION TO SELL, ETC.

behalf mentioned [or of and in the hereditaments mentioned in the schedule hereto, being part of the hereditaments mentioned in the said indenture], with the owner or owners of the other undivided moiety thereof [and to raise the money (if any) which may be required for equality of partition by a mortgage of all or some of the hereditaments to be acquired under such partition].

or,

To lease.

to make a lease of the land [or messuage and land] mentioned in the schedule hereto, being part of the hereditaments settled by the said indenture, for a term of —— years for building purposes. Dated this —— day of ——, 18—.

THE SCHEDULE ABOVE REFERRED TO.

No. XXII.

CONSENT *by a* MORTGAGEE *to a* LEASE *to be made by* MORTGAGOR *under sec.* 18 *of the Conveyancing Act,* 1881, *there being a proviso in the Mortgage Deed requiring such consent.*

CONSENT BY MORTGAGEE TO LEASE BY MORTGAGOR.

Rental of mortgage.

WHEREAS by an indenture dated the —— day of —— 18—, and made between A. B. of the one part, and C. D. of the other part, a messuage or dwelling-house known as, &c. (*describing it*), was conveyed by the said A. B. to the said C. D. in fee simple by way of mortgage to secure payment of the sum of £—— with interest thereon; And by the said indenture it was provided that no lease made by the said A. B., his heirs or assigns, during the continuance of the said security should take effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his executors, administrators, or assigns, should consent thereto in writing: AND WHEREAS the said A. B. is desirous of granting a lease of the said messuage or dwelling-house to G. H., of, &c., for a term of twenty-one years at the yearly rent of ——, and has requested the said C. D. to give his consent thereto: NOW the said C. D. hereby consents to the proposed lease, provided that the same is made in accordance in all respects with section 18 of the said Act. Dated the —— day of —— 18—.

And that mortgagor desires to make lease.

Consent by mortgagee.

(Signed) C. D. (*mortgagee*).

WITNESS, X. Y.

No. XXIII.

LICENCE BY LORD OF MANOR TO COPYHOLD TENANT.

LICENCE *by a* LORD *of a* MANOR *to his* COPYHOLD TENANT *to* LEASE *for twenty-one* YEARS.

I, A. B., of, &c., the lord of the manor of ——, in the county of ——, hereby authorise you to demise the copyhold messuage or tenement, situate, &c. (to which you were admitted tenant at a Court held for the said manor on the —— day of ——), for a term of twenty-one years, to be computed from the —— day of —— now next ensuing.

As WITNESS my hand this —— day of ——.

A. B. (*lord of the manor*).

To C. D. (*tenant*).

No. XXIV.

BY LESSOR TO LESSEE.

LICENCE *by* LESSOR *to* LESSEE *to* ASSIGN *the* PREMISES *for the* RESIDUE *of the* TERM.

I, A. B., of, &c., hereby authorise you to assign the messuage and premises situate at, &c., comprised in a certain indenture dated the —— day of ——, and made between me of the one part and you of the other part, for the residue of the term of twenty-one years thereby created, yet so that, save and except the assignment hereby authorised to be made, no future assignment or underlease of the said messuage or premises during the said term shall be made without the written consent of myself, my heirs or assigns.

As WITNESS my hand this —— day of ——.

A. B. (*lessor*).

To C. D. (*lessee*).

No. XXV.

LICENCE (*a*) *from* LESSOR *to* LESSEE *to grant an* UNDERLEASE *of* PART *of the* DEMISED PREMISES *upon* CONDITION *that the* UNDERLESSEE *shall not* ASSIGN *or* UNDERLET *without the* CONSENT *of the* SUPERIOR LESSOR.

LICENCE TO UNDERLET.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part: WHEREAS by an indenture of lease dated, &c., and made, &c., the said A. B. did demise certain lands and hereditaments therein described unto the said C. D., his executors, administrators, and assigns, from the 24th day of June then last for the term of twenty-one years thence next ensuing, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the lessee's part to be observed and performed (including a covenant not to assign or underlet without the licence or consent in writing of the said A. B., his heirs or assigns first had and obtained, and a proviso or condition for re-entry on breach of any of the said covenants therein contained): AND WHEREAS the said C. D. has requested the said A. B. to grant his licence and consent to such underlease as is hereinafter mentioned, which the said A. B. has agreed to do, subject to such covenants and conditions as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement the said A. B. doth hereby GIVE and GRANT to the said C. D. LICENCE and AUTHORITY to underlet to E. F., of, &c., ALL, &c. (*describe parcels*), being part of the premises demised by the said indenture of lease FROM the —— day of —— last for the residue of the said term of twenty-one years granted by the said indenture of lease (except the last ten days thereof), SUCH underlease to be subject to the covenants and conditions contained in the said indenture of lease, on the part of the lessee to be observed and performed (except the covenant for payment of rent) so far as the same covenants and

Recital of lease.

Request by lessee to lessor to grant consent to underlease.

Witnessing part.

Lessor grants to lessee licence to underlet part of demised premises for residue of original term, except ten days, subject to covenants and conditions of superior lease, and

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(*a*) As this instrument contains a covenant, it should be under seal; but a simple licence to assign may be by writing only, unless a deed is expressly required by the lease.

LICENCE TO UNDERLET.

to a new condition against assignment or sub-letting without consent of superior lessor.

conditions relate to the premises to be comprised in such underlease, and to be made on the express condition that the said E. F., his executors, administrators, or assigns shall not at any time assign, underlet, or otherwise part with the last mentioned premises, or any part thereof, for the whole or any part of the term to be granted by such underlease, without the licence or consent in writing of the said A. B., his heirs or assigns first had and obtained: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said licence hereinbefore granted, the said C. D. hereby covenants with the said A. B. that he the said C. D., his executors, administrators, or assigns will not, without the licence or consent in writing of the said A. B., his heirs or assigns, release or waive the condition against assignment or underletting upon which the said underlease is hereinbefore stipulated to be made, but will (unless otherwise directed by the said A. B., his heirs or assigns) re-enter on the premises comprised in the same underlease in case of any breach of such condition, and otherwise take full advantage thereof: PROVIDED ALWAYS, and it is hereby agreed and declared, that the proviso or condition for re-entry contained in the hereinbefore recited indenture of lease shall be exercisable, not only in case of the breach of any of the covenants contained in the same indenture, but also in case of the breach of the covenant hereinbefore contained.

Covenant by lessee not to waive condition against assignment, &c., to be inserted in underlease without lessor's consent.

Proviso that condition of re-entry in superior lease shall extend to a breach of the above covenant.

IN WITNESS, &c.

No. XXVI.

LICENCE TO UNDER-LESSEE TO ASSIGN.

LICENCE *by* SUPERIOR LESSOR *and* UNDERLESSOR *to an* UNDERLESSEE *to assign.*

Recite lease and underlease.

WHEREAS (*recite lease from A. B. to C. D. as in last Precedent*), AND WHEREAS by an indenture of underlease dated, &c., and made, &c., the said C. D. (having first obtained the licence and consent in writing of the said A. B.) did demise all, &c. (*parcels*), unto the said E. F., for all the residue of the said term of

LICENCE TO UNDER-LESSEE TO ASSIGN.

twenty-one years granted by the said indenture of lease as aforesaid, except the last ten days thereof, at the yearly rent of £——, and subject to the covenants therein contained, and on the lessee's part to be observed and performed, being covenants to the like effect as the lessee's covenants contained in the said indenture of lease of the —— day of ——, and also a covenant by the said E. F. not to assign or underlet without the licence or consent in writing of the said C. D., his executors, administrators, or assigns, and also of the said A. B., his heirs or assigns, first had and obtained, and subject also to a condition for re-entry on breach of any of the said covenants: AND WHEREAS the said E. F. has requested the said A. B. and C. D. to grant their licence and consent to such assignment as is hereinafter mentioned, which they have agreed to do: NOW THEREFORE the said A. B. and C. D. do, and each of them doth, hereby give and grant to the said E. F., licence and authority to assign all the premises comprised in the said indenture of underlease of the —— day of ——, 18—, unto G. H., of, &c., subject to the rent, covenants, and conditions by and in the said indenture of underlease contained, and on the under-lessee's part to be observed and performed, including the covenant against assigning and underletting without consent, which covenant shall remain in full force as against the said G. H., his executors, administrators, or assigns.

Application by under-lessee for licence to assign.

Superior lessor and underlessor give licence to under-lessee to assign.

AS WITNESS the hands of the said A. B. and C. D. this —— day of ——.

POWERS OF ATTORNEY.

Definition of a power of attorney and its liability to revocation.

A POWER of attorney is an authority given in due form of law by one person to another to act for him. By common law, a power of attorney is revocable by the grantor at any time, unless given for a valuable consideration (*a*), and it determines on his death (*b*). But this rule has been relaxed by recent statutes. Thus by 22 & 23 Vict. c. 35, sect. 26, it is provided as follows:—

Relaxation of rule by statute.

Trustees, &c., making payments, &c., under power of attorney, without notice of revocation by death or otherwise, indemnified.

> No trustee, executor, or administrator making any payment, or doing any act *bonâ fide* under or in pursuance of any power of attorney, shall be liable for the moneys so paid, or the acts so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor, or administrator, was not known to him: provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made, as he would have had against the trustee, executor, or administrator if the money had not been paid away under such power of attorney.

And by the Conveyancing Act, 1881, sect. 47, as follows:—

Same indemnity extended to persons acting under powers generally.

> (1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bank-

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(*a*) Walsh *v.* Whitcomb, 2 Esp. Ca. 565; Smart *v.* Sandars, 5 Com. Bench, 916.

(*b*) Watson *v.* King, 4 Chamb. 272; Wallace *v.* Cook, 5 Esp. Ca. 117.

rupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments made and acts done after the commencement of this Act.

And by the Conveyancing Act, 1882, as follows:—

Effect of power of attorney, for value, made absolutely irrevocable.

Sect. 8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser.

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

Sect. 9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Whether donee should execute power in name of principal.

It was formerly necessary that an attorney should execute his power in the name of the principal, and this is still the more correct and proper form to observe. It is, however, provided by the Conveyancing Act, 1881, sec. 46, as follows:—

> The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power, and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

Instruments containing powers of attorney may be deposited in central office of Supreme Court.

Instruments containing powers of attorney may be deposited in the central office of the Supreme Court, and office copies of instruments so deposited are sufficient evidence of their contracts (*a*).

(*a*) Conveyancing Act, 1881, sect. 48.

No. I.

POWER *of* ATTORNEY *from a* PERSON GOING *to* RESIDE ABROAD (*a*).

FROM PERSON GOING ABROAD.

Appointment of attorney,

to manage lands.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*appointor*), being about to leave England and to reside abroad for some time, do hereby constitute and appoint C. D., of, &c., and E. F., of, &c., and each of them, my true and lawful attorneys and attorney for the purposes hereinafter expressed, that is to say, To receive the rents and profits of and manage all the messuages, farms, lands, tenements, and hereditaments of or to which I, or any person or persons in trust for me, now am, is, or are, or at any time or times hereafter shall or may become seised, possessed, or entitled for any estate or interest whatsoever, with liberty in the course of such management to let or demise the said premises, or any part thereof, either from year to year or for any term or number of years, or for any less period than a year, at such rents, and either with or without any fine or premium, and subject to such covenants and conditions as my said attorneys or attorney shall think fit; and with liberty also to accept surrenders of leases or tenancies, to make allowances to and arrangements with lessees, tenants, and others, to cut timber and other trees, whether for repair, sale, or otherwise, to repair and rebuild houses or other buildings, and to insure the same against damage by fire, tempest, or otherwise, to repair fences, to drain or otherwise improve the said premises, or any part thereof, to appoint and employ bailiffs, gamekeepers, agents, servants and others to assist in the management of the said premises, and to remove them and appoint others in their place, and to pay and allow to the persons to be so employed as aforesaid such salaries, wages, or other remuneration as my said attorneys or attorney shall think fit: AND with power also to give effectual receipts and discharges for the rents and profits of the said premises, and on non-payment of any such rent, or any part thereof, or the breach of any covenant,

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(*a*) The power should of course be adapted to the actual property of the grantor, and to the extent of the authority which he wishes to entrust to his attorney. The above power is more comprehensive than would generally be required. More limited powers are given in the subsequent Precedents.

FROM PERSON GOING ABROAD.

agreement, or condition which ought to be observed or performed by any lessee or tenant of the said premises, or any part thereof, to distrain for such rent, or to commence, carry on, and prosecute any actions or other proceedings whatsoever for compelling payment of such rent, or for or on account of any such breach of covenants as aforesaid as my attorneys or attorney shall think fit, AND generally to do all such acts or things in or about the management of the said premises as my said attorneys or attorney might do if they or he were or was the absolute owners or owner thereof: ALSO to use and take all such lawful ways and means for the recovering and receiving, obtaining or getting, defending or protecting any messuages, farms, lands, and hereditaments, which do or shall, or which by my said attorneys or attorney shall be conceived, or thought to belong to me, as fully and effectually as I myself might or could use or take if I were personally present and did the same: ALSO to ask, demand, sue for, recover and receive all sums of money, goods, effects, and things now owing, or payable, or belonging to me, or which shall at any time or times hereafter be owing or belong to me, by virtue of any security or upon any balance of accounts, or otherwise howsoever, and on payment, transfer, or delivery thereof, or of any part thereof respectively, to give, sign, and execute receipts, releases, and other discharges for the same respectively; and on non-payment, non-transfer, or non-delivery thereof, or of any part thereof respectively, to commence, carry on, and prosecute any action, or other proceeding whatsoever for recovering and compelling the payment, transfer, or delivery thereof respectively: ALSO to state, settle, adjust, compound, submit to arbitration, and compromise all actions, suits, accounts, reckonings, claims, and demands whatsoever, which now are or hereafter shall or may be depending between me and any person or persons whomsoever, in such manner in all respects as my said attorneys or attorney shall think fit; ALSO to sell and convert into money any goods, effects, or things, which now belong or at any time or times hereafter shall belong to me (*c*); ALSO to sell or exchange all or any of the messuages, farms, lands, tenements, and hereditaments belonging to me, for such price or prices, or other equivalent or satisfaction in land

To recover money, &c.,

to bring actions, &c.,

to settle and compromise, &c.

To sell goods and effects.

To sell or exchange lands.

(*c*) This will not authorise a sale of Government stock. The Bank of England will only act on a special power of attorney for sales of stock.

or money, and by such ways and means as my said attorneys or attorney shall think reasonable, and so that any sale either of real or personal property under the power hereby conferred may be either by public auction or private contract, and such property may be sold either together or in lots, and subject to any special conditions relative to title or otherwise, and my said attorneys or attorney may buy in any property at any sale by auction, or rescind any contract for sale, and resell the property so bought in, or the contract for the sale whereof may be so rescinded as aforesaid: AND I authorise and direct my said attorneys or attorney to pay all moneys which shall come to their or his hands by virtue of any of the powers herein contained, or so much thereof as shall remain after paying thereout the costs, charges, and expenses incurred by them or him in the exercise of any of the powers and authorities herein contained, into my account at the —— Bank, or otherwise to pay and apply the same as I shall from time to time by letter or otherwise direct: AND I also authorise my said attorneys or attorney to appear for me in any court of justice to any action or other proceeding which may be instituted against me, or whereunto I shall be a party, and to defend the same, or suffer judgment to be had or given against me in any such action or other proceeding, by default or otherwise, as they or he my said attorneys or attorney shall be advised or think proper: AND also to enter into, make, sign, seal, execute, deliver, acknowledge, and perform any contract, agreement, deed, writing, or thing that may in the opinion of my said attorneys or attorney be necessary or proper to be entered into, made, signed, sealed, executed, delivered, acknowledged, or performed for effectuating the purposes aforesaid, or any of them, and for all or any of the purposes of these presents to use the name of the said A. B.: AND GENERALLY to do, execute, and perform any other act, deed, matter, or thing whatsoever which ought to be done, executed, or performed, or which, in the opinion of my said attorneys or attorney, ought to be done, executed, or performed in or about my concerns, engagements, and business of every nature and kind whatsoever, as fully and effectually to all intents and purposes as I myself could do if I were present and did the same in my proper person, it being my intent and desire that all matters and things respecting the same shall be under the full manage-

And to apply moneys coming to attorneys in payment of costs, &c.

To appear for donor, power,

and also to execute contracts, deeds, &c.,

and generally to do all other acts.

Powers to attorneys to appoint substitutes,

and to remove them at pleasure.

ment and direction of the said attorneys or attorney: AND I further declare that each one of them the said C. D. and E. F. may act in the several powers and authorities hereby conferred separately and apart from the other of them [AND FOR THE FURTHER, better, and more effectually doing, effecting, executing, and performing of the several matters and things aforesaid, I hereby give and grant unto my said attorneys, and each of them, full power and authority from time to time to appoint one or more substitute or substitutes to do, execute, and perform all or any such matters and things as aforesaid; and the same substitute or substitutes at pleasure to remove, and to appoint another, or others, in his or their place or places] (*d*); and all and whatsoever my said attorneys, or either of them [or their or his substitute or substitutes] (*d*), shall do or cause to be done in or about the premises, I hereby covenant with the said C. D. and E. F. to allow, ratify, and confirm.

IN WITNESS, &c.

No. II.

TO RECEIVE RENTS, DISTRAIN, ETC.

POWER *of* ATTORNEY *to receive* RENTS, *and distrain for the same, and also to receive* SUMS *consigned to the* DONOR *of the power* (*a*).

Recite seisin of certain lands by donor.

Appointment of attorney

to receive rents,

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B., of, &c. (*appointor*), SEND GREETING: WHEREAS I am seised of and entitled to divers messuages and tenements, situate in the county of ——, and elsewhere, and am likewise in the habit of receiving money remitted to me from abroad by ——: Now KNOW ALL MEN by these presents, that I hereby constitute and appoint my son C. D., of, &c., to be my true and lawful attorney, for me and in my name and on my behalf, to ask, demand, sue for, recover, and receive of and from all

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(*d*) The words within brackets will be omitted where the grantor does not wish to confer on his attorney a power of appointing substitutes.

(*a*) It is supposed in this case that the grantor has no property beyond the real estate and the consignments from India, which it is necessary to place under the control of an agent.

tenants and other persons who ought to pay the same, all rents and sums of money which now are, or hereafter shall become due or payable from or in respect of the said messuages and tenements, or any of them, and upon receipt thereof, to give and sign good and sufficient receipts and discharges for the same: AND also, if they shall think fit so to do, to make abatements and allowances of rent to any of the tenants of the premises, and to allow deductions for ground rents, land tax, repairs and other matters, and to settle and adjust all accounts, claims, and demands in relation thereto, and also upon non-payment of the said rents or other moneys, or any of them, or any part or parts thereof, to take such steps and proceedings by distress, action or otherwise, to recover the same as my said attorney shall think fit: AND also for me and in my name or otherwise, to receive all sums of money whatsoever which are or at any time hereafter may be consigned to me from India or elsewhere, by or on account of the said ——, and on receipt thereof to sign and give good and sufficient receipts and discharges for the same: AND I agree to ratify and confirm all and whatsoever the said C. D. shall lawfully do in and concerning the premises by virtue of these presents: [AND I DECLARE that this power shall be irrevocable for one year from the date hereof] (*a*).

TO RECEIVE RENTS, DISTRAIN, ETC.

and distrain for the same

and also to receive all sums consigned to donor of power.

IN WITNESS, &c.

No. III.

POWER *of* ATTORNEY *to receive a* DEBT.

TO RECEIVE DEBTS.

To receive debts.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*appointor*), hereby constitute and appoint C. D., of, &c. (*attorney*), to be my true and lawful attorney for me, and in my name or otherwise to ask, demand, receive, sue for, and recover from X. Y., of, &c., the sum of £ —— owing from him to me

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(*a*) See Conveyancing Act, 1882, sect. 9.

TO RECEIVE DEBTS.

on a bond dated, &c., and all interest due in respect thereof, and on receipt thereof, or of any part thereof, to give proper receipts and discharges for the same: AND whatsoever the said C. D. shall lawfully do in the premises, I hereby agree to ratify and confirm.

IN WITNESS, &c.

No. IV.

TO SELL LAND.

POWER *of* ATTORNEY *to* SELL *a* LANDED ESTATE, *and* MANAGE *same in meantime* (*a*).

Appointment of attorney to sell estate, with usual powers,

KNOW ALL MEN BY THESE PRESENTS, that I, A.B., late of, &c., and now residing at, &c., do hereby appoint C. D., of, &c. (*attorney*), to be my true and lawful attorney for me and on my behalf and in my name to sell at such time or times as my said attorney shall think fit, ALL, &c. (*describe shortly the estate*), and the inheritance thereof in fee simple, either together or in lots, and either by public auction or private contract, and either with or without special conditions as to title or otherwise, with liberty to buy in at any sale by auction, to rescind or vary contracts for sale, and to re-sell without being answerable for any loss arising thereby: AND ALSO to execute such deed or deeds for conveying the said premises to any purchaser or purchasers thereof, and also to give effectual receipts and discharges for the purchase moneys of the said premises as my said attorney shall think fit: AND ALSO in the meantime and until such sale to receive the rents and profits of the said premises, and to recover the same when in arrear by action or distress, and generally to manage the said premises with liberty in the course of such management to let or demise the said premises or any part thereof either from year to year or for any term of years not exceeding twenty-one years to take effect in possession at and under such rents and covenants as my said attorney shall think fit, and with liberty also to make allowances to and arrangements with tenants, to cut timber and other trees for repairs, sale, or otherwise, to

and to convey to purchaser and give receipts for purchase-money,

and to manage premises until sale, with usual powers.

(*a*) See the next Precedent.

expend money in repairs and improvements and insurances against loss or damage by fire, tempest or otherwise, and to do such other acts and things in or about the management of the said premises as my attorney shall think fit: AND WHATSOEVER my said attorney shall lawfully do in the premises I hereby agree to ratify and confirm: AND I DECLARE that this power is irrevocable for one year computed from the date hereof.

TO SELL LAND.

IN WITNESS, &c.

No. V.

DEED *of* CONVEYANCE *of land by Person resident abroad to a* TRUSTEE *in trust for* SALE, *and for* MANAGEMENT *in the meantime (instead of a power of Attorney) (a).*

CONVEYANCE IN TRUST INSTEAD OF POWER OF ATTORNEY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*owner*), of the one part, and C. D., of, &c. (*trustee*), of the other part, WITNESSETH, that for divers good causes and considerations the said A. B. as beneficial owner hereby conveys unto the said C. D., ALL (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple, UPON TRUST that the said C. D., his executors, administrators or assigns, shall, without any further consent on the part of the said A. B., or any person claiming under him, sell the said premises at such times and in such manner as the trustee or trustees shall think fit: AND shall in the meantime and until such sale receive the rents and profits of the said premises and manage the same, with liberty in the course of such management to let or demise the said premises or any part thereof either from year to year or for any term of years not exceeding twenty-one years, to take

Grant of lands to trustees in trust to sell with usual powers,

and to receive rents and manage in the meantime.

(*a*) A purchaser under a power of attorney must (unless the power is made irrevocable for a fixed time under sect. 9 of the Conveyancing Act, 1882) satisfy himself that the principal is alive at the time when the conveyance is executed. It may therefore be convenient in some cases instead of giving a power to vest the property by a conveyance in the intended attorney, upon proper trusts for sale and management in the meantime as in the above Precedent.

Suggestion that a conveyance in trust is sometimes more convenient than a power of attorney.

CONVEYANCE IN TRUST INSTEAD OF POWER OF ATTORNEY.

effect in possession at and under such rents and covenants as the said trustee or trustees shall think fit, and with liberty also to make allowances to and arrangements with tenants, to cut timber and other trees whether for repairs, sale, or otherwise, to expend money in repairs and improvements, and insurances against loss or damage by fire, tempest, or otherwise, and generally to do such acts and things in or about the management of the said premises as the said trustee or trustees shall think fit: AND IT IS DECLARED that the said trustee or trustees shall with and out of the moneys to arise from any sale or sales as aforesaid, or to be received for rents and profits in the meantime, pay and discharge all costs and expenses incurred in or about any such sale or the management of the said premises or otherwise in or about the execution of the trusts and powers herein contained, and shall stand possessed of the residue of the said sale, moneys, rents, and profits, IN TRUST for the said A. B. absolutely, and so that as between the real and personal representatives of the said A. B., the said sale moneys, rents, and profits shall be deemed personal estate whether the premises shall be sold in the lifetime of the said A. B. or after his decease: AND it is declared that for the purposes of the covenant for title implied in a conveyance by virtue of section 7 of the Conveyancing and Law of Property Act, 1881, these presents shall be deemed to be a conveyance for valuable consideration.

Declaration of trust of sale moneys and rents

after paying expenses

for grantor as personal estate.

Statutory covenant for title to apply.

IN WITNESS, &c.

No. VI.

POWER *of* ATTORNEY *to Surrender* COPYHOLD HEREDITAMENTS *in favour of a Purchaser.*

TO SURRENDER COPYHOLDS TO PURCHASER.

KNOW ALL MEN that I, A. B., of, &c. (*appointor*), one of the customary or copyhold tenants of the manor of ——, in the county of ——, do hereby constitute and appoint C. D., of, &c. (*attorney*), my true and lawful attorney, for me and in my name, and either at the next or any subsequent court to be holden for the said manor, or out of court to surrender into the hands of the lord or lady, lords or ladies for the time being of

Attorney to appear at the court and surrender the same manor, by the hands and acceptance of the steward or deputy steward, by the rod, according to the custom of the said manor, ALL THOSE three cottages or tenements, situate and being at —— (which said premises are part of the hereditaments to which I was admitted tenant at a court held for the said manor on the —— day of ——), TO THE USE of E. F., of, &c., his heirs and assigns for ever, according to the custom of the said manor: AND FURTHER, for me, the said A. B., and in my name to do and execute all such acts, matters, and things as shall be needful or expedient for making such surrender as aforesaid, and for procuring the said E. F., his heirs or assigns, to be admitted tenant or tenants of the said copyhold premises, and as fully and effectually to all intents and purposes as I myself could or might do if I were personally present: AND I HEREBY agree to ratify and confirm all and whatsoever the said C. D. shall lawfully do or cause to be done by virtue of these presents. AND I declare that this power is irrevocable by me for one year computed from the date hereof.

TO SURRENDER COPYHOLDS TO PURCHASER.

hereditaments to use of purchaser;

and to do all other necessary acts.

Power to be irrevocable for a year.

IN WITNESS, &c.

No. VII.

POWER *of* ATTORNEY *by a Landlord to Re-enter on Premises and* EXPEL TENANT *from Premises comprised in a* LEASE.

RE-ENTER AND EXPEL TENANT.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*appointor*), do hereby constitute and appoint C. D., of, &c., and E. F., of, &c. (*attorneys*), and each of them to be my true and lawful attorneys and attorney, at the expense of me, my executors, or administrators, into and upon the messuages, lands, and hereditaments situate at, &c., comprised in and demised by a certain indenture, dated the —— day of ——, and made between me of the one part, and G. H. of the other part, or into and upon any part of the said premises in the name of the whole, to re-enter, and the said G. H., his executors, administrators, and assigns, and all other tenants and occu-

Power by landlord to attorney to re-enter and expel tenant.

RE-ENTER AND EXPEL TENANT.

piers thereof, thereout utterly to expel, remove, and put out, and for the purpose of obtaining possession of the said premises, to take all such steps and proceedings at law or otherwise, and to do all such matters and things either in my name, or in the names or name of the said attorneys or attorney as in their or his opinion shall seem expedient, and as I myself might lawfully have taken and done; and I hereby declare that either of them the said C. D. and E. F. shall have full authority to act in the premises singly and without the other of them: AND WHATSOEVER the said C. D. and E. F., or either of them, shall lawfully do or cause to be done in or about the premises, I, the said A. B., hereby covenant with the said C. D. and E. F. to ratify and confirm.

IN WITNESS, &c.

No. VIII.

TO RECEIVE A LEGACY CHARGED ON LANDS.

POWER *of* ATTORNEY *to receive a Legacy* (*a*).

Recite will.

Appointment of attorney to receive legacy.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*appointor*), do hereby appoint C. D., of, &c., my true and lawful attorney for me and in my name to receive of and from the executors of the will of G. H., late of, &c., deceased, or other the person or persons liable to pay the same, ALL that legacy of £1000 given and bequeathed to me by the said will (after deducting the legacy duty thereon), and all interest (if any) due and owing in respect thereof, and to give an effectual receipt and discharge for the said legacy and interest to the person or persons paying the same, and also on non-payment of the said legacy and interest, or any part thereof respectively, to institute all such actions and proceedings, and to do all such other acts and things for the purpose of recovering and compelling payment thereof as my said attorney may think fit: AND WHATSOEVER my said attorney shall do in the premises, I hereby agree to ratify and confirm.

IN WITNESS, &c.

(*a*) See 22 & 23 Vict. c. 35, sect. 26, *suprà*, p. 682. Under this enactment the executors may safely pay the legacy to the attorney pursuant to the above power, without requiring evidence that the legatee is living.

No. IX.

POWER *of* ATTORNEY (*a*) *to receive a* SHARE *of* RESIDUARY ESTATE *and to* SETTLE ACCOUNTS.

TO RECEIVE SHARE OF RESIDUARY ESTATE.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*appointor*), do hereby appoint C. D., of, &c., to be my true and lawful attorney, for me and in my name to receive of and from the executors and trustees of the will of my father, G. H., late of, &c., deceased, or other the person or persons liable to pay or account for the same, ALL that my one-third share or other my share under the trusts of the said will of and in the proceeds of the real and residuary personal estate of the said testator, which real and residuary personal estate were by the said will vested in trustees in trust for sale and conversion and division among the testator's children, as in the said will is mentioned, and of and in the rents and annual income of the said real and residuary personal estate, until the sale, conversion and division thereof, and all other (if any) the moneys payable to me under the said will: AND ALSO to examine, approve, and allow or (at the discretion of my said attorney) to disapprove and disallow all such accounts as shall from time to time be furnished by the said executors and trustees of and concerning the real and personal estate of the said testator, and the application and disposition thereof, and to compound, submit to arbitration, or otherwise settle all or any questions or disputes which may arise in relation to such accounts or to the testator's estate: AND ALSO to permit the said executors and trustees to postpone the sale and conversion of any part of the said real or personal estate, for so long as may be thought desirable: AND ALSO upon the distribution of the said estate and the proceeds thereof to execute for me and in my name to the said executors and trustees such receipts, releases, and discharges from all actions, claims, and demands, for and in respect of the testator's estate or my share thereof, or any act, deed, and matter, or thing done or omitted to be done by the said executors and trustees, or any of them in relation thereto, as my said attorney shall think fit: AND WHATSOEVER my said attorney shall lawfully do in the premises, I hereby agree to ratify and confirm.

Appointment of attorney to receive from executors of will the appointor's share of the testator's estate,

and to settle accounts, &c.,

to permit postponement of sale and conversion,

to execute releases to executors and trustees.

IN WITNESS, &c.

(*a*) See p. 682.

No. X.

POWER *of* ATTORNEY *to execute a* DEED *of* RECONVEYANCE *or* TRANSFER *of* MORTGAGE (*a*).

TO EXECUTE RECONVEYANCE OR TRANSFER OF MORTGAGE.

Recital that appointor is mortgagee, and that money has been called in.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B., of, &c. (*appointor*), SEND GREETING: WHEREAS I am the mortgagee under an indenture, dated, &c., and made, &c. (*date and parties*), of certain lands and hereditaments, situate in the parish of ——, in the county of ——, therein described for securing the payment to me of the sum of £——, with interest thereon: AND WHEREAS I have required payment of the money secured by the said mortgage and it is uncertain whether the said E. F. (*mortgagor*) will pay the same himself or whether he will procure some other person or persons to pay the same in consideration of having a transfer of the said mortgage: NOW I, the said A. B., do hereby appoint C. D., of, &c. (*attorney*), to be my true and lawful attorney for me and in my name to receive of and from the said E. F. or any other person or persons who may pay the same the said principal sum of £——, owing to me upon the security of the said indenture of mortgage, and all interest owing thereon, and to give an effectual receipt for the same: AND ALSO upon such receipt to execute for me and in my name, and as my act or deed, any deed which my said attorney shall approve either for reconveying the hereditaments comprised in the said mortgage to the said E. F., or other the person or persons entitled to the equity of redemption thereof, freed and discharged from the said mortgage, and all moneys owing thereon: OR (if the mortgage shall be paid off by any person or persons who may ask for a transfer thereof) for the purpose of transferring to such person or persons, or his or their nominee or nominees, the said principal sum of £——, and all interest due and to become due thereon, and the benefit of all securities for the same, and also for conveying unto and to the use of such person or persons as aforesaid, or his or their nominee or nominees, all and singular the hereditaments comprised in the said mortgage, subject to such right or equity of redemption as

That it is uncertain whether money will be paid off by mortgagor, or to intended transferee.

Appointment of attorney to receive money,

and upon receipt to execute reconveyance or transfer.

(*a*) This power can easily be adapted to any other description of deed.

shall be subsisting therein, AND WHATSOEVER my said attorney shall do in the premises, I hereby agree to ratify and confirm: AND I declare that this power is irrevocable by me for one year computed from the date hereof.

TO EXECUTE RECONVEYANCE OR TRANSFER OF MORTGAGE

IN WITNESS, &c.

No. XI.

POWER *of* ATTORNEY *to* EXECUTE *a particular* DEED *set out in the* SCHEDULE.

TO EXECUTE DEED SET OUT IN SCHEDULE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B., of, &c., (*appointor*), SEND GREETING: WHEREAS a deed of family arrangement is proposed to be made and executed between me and my brothers and sisters, and the trustees of the will of X. Y., late of, &c., in relation to the trust estate held upon the trusts of the said will, and a draft of the proposed deed has been prepared, and a copy thereof is annexed hereto by way of schedule: AND WHEREAS the draft has been approved by my solicitor C. D., of, &c., and is also approved by me: NOW THESE PRESENTS WITNESS, that I, the said A. B., hereby appoint the said C. D. to be my attorney to execute for me and in my name, and as my act and deed, the deed to be engrossed from the draft, a copy whereof is annexed hereto by way of schedule: PROVIDED ALWAYS, AND I AUTHORIZE my said attorney (if he shall think fit), to consent to any alterations in the said draft before the engrossment thereof, so as such alterations be not inconsistent with the general purport and effect of the said arrangement as set out in the said draft: AND I DECLARE that the deed which shall be executed by my said attorney in professed exercise of this power shall be deemed to be the deed hereby authorized to be executed by him, notwithstanding any variations therein from the said draft as set out in the schedule hereto, and his execution shall be conclusive evidence that the variations have been approved of by him, and are such as hereby authorized: AND I ALSO DECLARE that this power is irrevocable by me for one year computed from the date hereof.

Recital of proposal to execute deed, of which a draft is set out in schedule.

That draft has been approved by appointor's solicitor.

Appointment of attorney to execute deed.

Proviso authorizing attorney to consent to alterations in draft.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

MISCELLANEOUS DEEDS.

No. I.

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

WARRANT *of* ATTORNEY *to confess* JUDGMENT (*a*).

Warrant of attorney to confess judgment.

To E. F., of, &c., and G. H., of, &c., Solicitors of Her Majesty's Supreme Court of Judicature, jointly and severally, or to any other solicitor of the same Court. THESE ARE TO DESIRE AND AUTHORISE you the solicitors above named, or either of you or any other solicitor of the said Court, to appear for me, A. B., of, &c., in the High Court of Justice (Queen's Bench Division), in an action of debt for £—— for money lent, at the suit of C. D., of, &c., and thereupon to confess the said action, or suffer a judgment to pass against me in the same action, and to be thereupon forthwith entered up against me of record of the same Court for the sum of £—— and costs of suit: and I, the said A. B., hereby further authorise and empower you or any one of you, after the said judgment shall be entered up as aforesaid, for me and in my name, and as my act and deed, to sign, seal, and execute a good and sufficient release in the law to the said C. D., of all and all manner of errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, or to be had, made, committed, done, or suffered in, about, or concerning the aforesaid judgment, or the proceedings relating thereto: And whatsoever you, or any one of you, shall do or cause to be done in the premises, or any of them, this shall be to you and to every of you a sufficient warrant or authority.

(*a*) A warrant of attorney to confess and enter up a judgment given as security for the payment or repayment of money, or for the transfer or retransfer of stock, is liable to the same stamp duty as a mortgage for the same purpose. A warrant of attorney of any other kind is liable to a stamp duty of 10*s*. (33 & 34 Vict. c. 97.)

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

In witness whereof I have hereunto set my hand and seal the —— day of ——, in the year of our Lord 18—.

A. B.

Signed, sealed, and delivered by the said A. B. in the presence of L. M. of ——, in the county of ——, one of the solicitors of Her Majesty's Supreme Court of Judicature, expressly named by the said A. B. as his solicitor, and attending at his request to inform him of the nature and effect of the above instrument, and I, the said L. M., declare that I have informed the said A. B. of the nature and effect of the said instrument before his execution thereof, and that as his solicitor I subscribe my name as a witness to the due execution hereof (*b*).

L. M. [*Signature of defendant's solicitor.*]

(*b*) By the Debtors' Act, 1869 (32 & 33 Vict. c. 62), it is provided that a warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person shall not be of any force unless there shall be present some attorney of one of the superior courts on behalf of such person expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney (sect. 24); and a warrant of attorney not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof, or was fully informed of the same (sect. 25). And sect. 26 provides that where in an action a warrant of attorney to confess judgment is given, and the same, or a true copy thereof, is not filed in the Queen's Bench within twenty-one days after the execution thereof, as required by 3 Geo. 4, cap. 39, the same shall be deemed fraudulent and void, and if any such warrant of attorney was given subject to any defeazance or condition, such defeazance or condition shall be written on the same paper or parchment with the warrant before the filing thereof, otherwise the warrant shall be void. The above enactments are substituted for similar clauses in Acts of Parliament repealed by the Act 32 & 33 Vict. c. 83.

By the Judicature Act, 1873, sect. 87, all persons admitted as solicitors, attorneys, or proctors are to be called solicitors of the Supreme Court of Judicature.

No. II.

DEFEAZANCE ON WARRANT OF ATTORNEY.

DEFEAZANCE *to be indorsed on the* Warrant *of* Attorney *contained in the* last Precedent, *given to secure the payment of £—— and Interest.*

Recite mortgage of policy to secure £— and interest.

Whereas by an indenture bearing even date with the within-written warrant of attorney, and made between (*parties*), in consideration of the sum of £1000 paid by the said C. D. to the said A. B., the said A. B. has assigned a policy of assurance on his life for the sum of £——, effected in the —— Assurance Office, and numbered ——, and the moneys thereby assured, unto the said C. D., by way of security for the payment of the sum of £1000, with interest for the same after the rate of £5 per cent. per annum, on the —— day of —— next: And the indenture now in recital contains covenants by the said A. B. for the payment of the said sum of £1000, and the interest thereof, and to keep on foot the said policy, and to effect a new policy in case the subsisting policy shall become void, and to repay to the said C. D., his executors, administrators, or assigns, all moneys (if any) paid by him or them in or about the keeping on foot the said policy or in effecting or keeping on foot any such new policy as aforesaid:

Defeazance.

NOW BE IT REMEMBERED, that the within-written warrant of attorney is given as a collateral security for the payment of the principal money and interest secured by the said indenture: And it is hereby declared that no execution shall be issued or taken out upon the judgment or judgments to be confessed in pursuance or by virtue of the said warrant of attorney, unless and until default shall be made in payment of the principal money and interest secured by the said indenture, or some part thereof respectively, contrary to the true intent and meaning of the said indenture, And that in case default shall be made in payment of the said principal money and interest, or any part thereof respectively, contrary to the true intent and meaning of the said indenture, then and in such case it shall be lawful for the said C. D., his executors, administrators, or assigns, to sue out such execution or executions, or other process, upon or by virtue of the said judgment or judgments, or any of them, as he

DEFEAZANCE ON WARRANT OF ATTORNEY.

or they shall think fit or be advised for the recovery of such principal money and interest respectively, and all costs, charges, and expenses which he or they shall sustain or be put unto by reason of the non-payment of such principal money and interest respectively, or any part thereof: And also that after the full payment to the said C. D., his executors, administrators, or assigns, of the said principal money and interest, and of all such costs, charges, and expenses, as aforesaid, he the said C. D., his executors, administrators, or assigns shall and will on the request and at the cost and charges of the said A. B., his heirs, executors, or administrators, acknowledge satisfaction of the said judgment or judgments upon the record or records thereof, in due form of law, and do all further or other acts, matters, or things which may be reasonably required for releasing and extinguishing all right and remedy upon the said judgment or judgments, and all executions thereupon respectively.

In witness, &c.

No. III.

WARRANT *of* Attorney *to enter up Satisfaction of* Judgment.

WARRANT TO ENTER UP SATISFACTION OF JUDGMENT.

To A. B., of, &c., and C. D., of, &c., Solicitors of the Supreme Court of Judicature jointly and severally: Whereas (*here recite warrant of attorney by E. F. to G. H. to appear for E. F. in an action for debt for £—— for money borrowed at the suit of L. M., of, &c., and to confess judgment against E. F. for the sum of £——, and costs of suit*): And whereas, pursuant to the said recited warrant of attorney, on the —— day of ——, a judgment was duly entered up at the suit of the said L. M. against the said E. F. for the sum of £—— and costs of suit: And whereas the said sum of £—— and all interest thereon, and all other moneys secured by the said judgment, have been duly paid by the said L. M., as he doth hereby admit: NOW THESE ARE TO DESIRE you, the attorneys above named,

That judgment was entered up.

That moneys secured by judgment had been paid.

Power to

WARRANT TO ENTER UP SATISFACTION OF JUDGMENT.

enter up satisfaction.

or either of you, forthwith to enter up upon record of the said Court satisfaction of the said judgment: AND FOR whatsoever you or either of you shall do in the premises, this shall be a sufficient warrant or authority.

IN WITNESS, &c.

No. IV.

COMPOSITION WITH CREDITORS.

COMPOSITION DEED *under Bankruptcy Act*, 1869; DEBTOR *and a* SURETY *covenant to pay* TEN SHILLINGS *in the* POUND *by* INSTALMENTS (*a*).

Parties.

That debtor filed petition for liquidation by arrangement or composition.

Resolution at first general meeting of creditors to accept composition.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*debtor*), of the first part, C. D., of, &c. (*surety*), of the second part, and E. F., of, &c. (*trustee*), of the third part: WHEREAS the said A. B., being unable to pay his debts, filed a petition for liquidation by arrangement or composition in the County Court of —— holden at —— on the —— day of —— last: AND WHEREAS at a general meeting of the creditors of the said A. B., duly convened, and held at the office of Mr. —— at ——, it was resolved by the statutory majority of creditors assembled at such meeting—1st, That a composition of ten shillings in the pound should be accepted in satisfaction of the debts due to the creditors from the said A. B.; 2ndly, that such composition be payable by three equal instalments, the first within seven days from the registration of the extraordinary resolution, the second at the expiration of three calendar months from such registration, and the third at the expiration of six calendar months from such registration; 3rdly, that the security of C. D., of, &c., be accepted for the payment of the whole of the instalments of the said composition; 4thly, that E. F., of, &c., be appointed trustee for the receipt and distribution of the said composition; 5thly, that the terms of the said

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(*a*) See the Bankruptcy Act, 1869, sections 126, 127. In the above Precedent it is supposed that the creditors are satisfied to accept the personal security of the debtor and a surety, without a *cessio bonorum*.

COMPOSITION WITH CREDITORS.

composition be embodied in a deed to be prepared by —— and approved by —— on behalf of the creditors, such deed to contain proper covenants for carrying into effect the said resolution, and for releasing the debtor (*b*) : AND WHEREAS the said resolution was duly filed, with the statement of the debtor's affairs and of the proofs and proxies produced at the said meeting ; and at a second general meeting, duly convened and held at the office aforesaid on the —— day of —— last, the said resolution was duly confirmed by the statutory majority of creditors assembled thereat : [AND WHEREAS these presents have been prepared by the said —— and approved of by the said —— as a proper deed for carrying into effect the said resolution and for releasing the said A. B. (*c*)].

Filing of resolution ;

confirmation thereof at second meeting.

That this deed has been prepared and approved.

NOW THIS INDENTURE WITNESSETH AND DECLARES as follows :—

Witnessing part.

1. THE said A. B. and C. D. hereby jointly and severally covenant with the said E. F. (hereinafter called "the trustee") that they the said A. B. and C. D. or one of them, will pay to the trustee, within seven days from the registration of the aforesaid resolution, such a sum of money as shall be equal to the amount of those debts of the said A. B. which, under the 32nd section of the Bankruptcy Act, 1869, are given a priority over other debts, to be applied by the trustee in payment of such preferential debts : AND ALSO WILL pay to the trustee such a sum of money as shall be equal to the amount of ten shillings in the pound upon all the debts of the said A. B. (other than such preferential debts as aforesaid), by three equal instalments, at the times following (that is to say), the first of such instalments within seven days from the registration of the said resolution, and the second and third instalments at the expiration of three calendar months and six calendar months respectively from the registration of the said resolution, to the intent that the sum so paid to the trustee as last aforesaid shall be distributed among the creditors of the said A. B., *pari passu :* AND ALSO WILL, on demand of the trustee, pay all costs, charges, and ex-

Joint and several covenant by debtor, and surety to pay— 1st. Preferential debts in full ;

2ndly. A composition of 10s. in the £ on other debts by instalments ;

3rdly. All costs.

(*b*) The following variation is suggested in the resolution as to the deed :—" That the deed, a draft of which was submitted to the said meeting and signed by the chairman (meaning this present deed), be approved of as a proper deed for carrying into effect the said resolution, and for releasing the debtor."

(*c*) This will be omitted if the variation above suggested in the note is adopted.

penses incurred, or to be incurred in or relating to the aforesaid proceedings for liquidation or composition, including the costs of and incident to these presents and the carrying the same into effect.

Release of debtor on payment of composition.

2. From and after payment of the said composition and of all other moneys payable under Article I., at the times and in the manner aforesaid, the said A. B. shall stand and be released from all debts owing to creditors bound by the provisions of this composition: And in the meantime, and pending the payment of the said compensation, no proceeding shall be taken by any creditor against the said A. B. in respect of any such debt as aforesaid.

What shall be deemed debts.

3. All debts provable in bankruptcy shall be deemed debts for the purpose of this composition, and the composition shall be payable in respect of such amount as would have been so provable.

Creditors to retain their rights against other parties and all securities, but to be entitled to dividend in respect only of debt remaining after giving credit for value of security.

4. Nothing herein contained shall prejudice any right or remedy which any creditor may have against any other person than the said A. B., nor prejudice or affect any mortgage, lien, or security, which any creditor may have on any property or effects of the said A. B. or of any other person, but a creditor holding any such mortgage, lien, or security shall be entitled to receive the said composition in respect only of the amount of the debt owing to him after realising or giving credit for the value of such mortgage, lien, or security in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy.

Power of trustee to make void this deed in case of default in payment of any instalment of the composition.

5. If default shall be made in payment of any instalment of the said composition, or any part thereof, or of any other moneys payable under Article 1 at the time hereby appointed for payment thereof, then and in such case it shall be lawful for the trustee, by notice in writing, under his hand, to be sent by post to the usual or last known place of abode in England of the said A. B. or of the said C. D., to declare these presents void, and the same shall be thenceforth void accordingly.

Trustee to have power of admitting and rejecting proofs, and certain

6. The trustees shall have the like power of admitting and rejecting proofs of debts and claims as a trustee under a liquidation by arrangement, And the Bankruptcy Rules, Nos. 311 to 314 inclusive, shall be deemed to be incorporated in these presents, and shall for this purpose be read and construed as if the

same had been expressly made applicable to a composition as well as to a liquidation by arrangement.

COMPOSITION WITH CREDITORS

7. If the trustee, or any future trustee of these presents shall die or desire to be discharged from, or become unfit or incapable to act in the trusts thereof, a new trustee may be appointed in his place by the majority in value of the creditors present or represented at a meeting duly summoned for that purpose, in like manner as a new trustee may be appointed in a liquidation by arrangement under the Bankruptcy Rules, And every such new trustee shall have the like powers and duties as the trustee for whom he shall be substituted.

of the Bankruptcy Rules, 1870, to be incorporated.

Provision for appointment of new trustees.

In witness, &c.

No. V.

APPOINTMENT *by* Parents *under a* Power *in their* Marriage Settlement *among their* Children *equally, some of such children being of age, and some under age, with* Power *of* Revocation, *except as to the share of a* Son *about to marry* (*a*).

APPOINTMENT UNDER POWER TO CHILDREN.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., and C. his wife (*appointors*), SEND GREETING. Whereas, by an indenture, dated the —— day of ——, 18—,

Recite settlement.

(*a*) A power to appoint to children in such proportions as the donee shall direct is effectually exercised by an appointment of a limited interest to one, and of the *corpus* of the fund to another (Alexander *v.* Alexander, 2 Ves. Senr. 640; Bristowe *v.* Ward, 2 Ves. 336). So a general power to appoint a fund amongst the children in such manner as the donee shall direct, or to charge real estate with a sum for portions of children, authorises an appointment to trustees in trust to pay the income or rents to a daughter for her separate use (Alexander *v.* Alexander, 2 Ves. Senr. 640; Maddison *v.* Andrew, 1 Ves. Senr. 59; Ratcliffe *v.* Hampson, 1 Jur. N. S. 1104; Thornton *v.* Bright, 2 My. & Cr. 230; Dickinson *v.* Mort, Ha. 178). But if there is a restraint on anticipation and the daughter was unborn at the date of the creation of the power, the Court will reject the words creating such restraint as infringing the rule against perpetuities, and uphold the appointment in other respects (Fry *v.* Capper, 1 Kay, 170; *Re* Teague's Settlement, L. R. 10 Eq. 564; *In re* Cunynghame's Settlement, *ib.* 11 Eq. 324; Buckton *v.* Hay, 11 Ch. D. 645; Herbert *v.* Webster, 15 Ch. D. 610).

Construction of powers of appointment amongst children.

Under the ordinary power of appointment among children, an appointment may be made to such uses, or upon such trusts as a child, being an object of the power, shall by deed or will (and if the child was born at the time of the creation of the power, but not otherwise, as such child shall by will alone) appoint (Jebb *v.* Tugwell, 7 De G. Mac. & Gor. 668; Phipson *v.* Turner, 9 Sim. 227; Morgan *v.* Gronow, L. R. 16 Eq. 1).

and made between the said A. B. of the first part, the said C. B. (then C. D.) of the second part, and E. F., G. H. and I. K. of the third part (being the settlement made in considera-

Appointment may be made to trustee for object;

Again, under such a power the fund may be appointed to trustees in trust for the objects of the power (Trollope *v.* Linton, 1 Sim. & St. 477); and real estate may be appointed to trustees upon trust to sell and divide the proceeds amongst the objects (Roberts *v.* Dixall, 2 Eq. Cas. Abr. 668, pl. 19; Long *v.* Long, 5 Ves. 445; Kenworthy *v.* Bate, 6 Ves. 793; Fowler v. Cohn, 21 Beav. 360; Cowx *v.* Foster, 1 J. & H. 30).

or, by direction of object, to persons who are not objects.

Again, under such a power, the fund may by the direction of a child, either in contemplation of or subsequently to marriage, be appointed in favour of his or her issue, or to the trustees of his or her settlement. Such an arrangement is regarded first as an appointment and then as a settlement by the object of the power (Thompson *v.* Simpson, 1 Dru. & War. 459; see also White *v.* St. Barbe, 1 V. & B. 399; Sug. Pow. 670; Limbard *v.* Grote, 1 My. & K. 1; Morgan *v.* Gronow, L. R. 16 Eq. 1). And an appointment of this kind made on the marriage of an infant daughter by the direction of her intended husband, has been held good (Fitzroy *v.* Duke of Richmond, 27 Beav. 190).

In Wright *v.* Goff (22 Beav. 207), a tenant for life had a power of appointing a fund amongst her children. A married woman was the only object of the power, and an arrangement was entered into between the tenant for life and the married woman and her husband, whereby the fund was appointed to her and then re-settled, giving an interest to her children and to a stranger. The husband survived, and the transaction was held to be binding on him.

As to fraudulent exercise of powers.

In exercising a power of appointment among children or other objects, it must be borne in mind that the substantial motive of the appointment must be the benefit of the objects of the power, and that an appointment made to such objects with a view not to their exclusive benefit, but for the benefit either wholly or partially of the donee of the power, or any other person, is void, as being what is technically called a fraud on the power.

Appointments in favour of infant children, who die soon afterwards how far good.

In Hitchinbroke *v.* Seymour (1 B. C. C. 395), lands were settled in strict settlement with a limitation of a term to trustees, to raise either in the lifetime of the tenant for life, if he should so direct or after his decease, portions for his younger children to be paid at such time as the tenant for life should direct. The tenant for life directed the trustees to raise the sum for an only daughter, being fourteen years of age, immediately. The daughter died shortly afterwards, and then the father claimed the sum as her administrator; but the Court held that this was a bad execution of the power. It appears, from what was said by Lord Eldon in Macqueen *v.* Farquhar, 11 Ves. 479, that the father knew that the child was in a consumption, so that the appointment was evidently made with a view to his own benefit; and this must be considered as the true ground of the judgment, rather than that given in Brown's Report, viz., that "it is contrary to the nature of a charge for children to have it raised before it is wanted." In Fearon *v.* Desbrisay (14 Beav. 635), personal estate was settled in trust for A. for life, and after his decease, for his children, at such ages, &c., as he should appoint, and in default of appointment, for the children equally, at twenty-one, with a power of maintenance, and a gift over, in case no child should become absolutely entitled. A. having a child eight months old, and another *en ventre sa mère*, appointed the fund to all his children living at his decease. One of the children survived A., but died an infant, and it was held that the appointment was good, and that the fund passed to the child's mother as administratrix. It will be seen that in this case the donee of the power could gain no personal benefit from the

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tion of the marriage then intended, and which was shortly afterwards solemnised, between the said A. B. and the said C. D.), it was agreed and declared that the said E. F., G. H.,

mode in which he exercised it, and there was no evidence to show that the appointment was not made *bonâ fide.* In Beere *v.* Hoffmister (23 Beav. 103), a joint power of appointment amongst children in the usual form was exercised by the husband and wife in favour of an only daughter, who was four years old. The daughter was in good health at the time of the appointment, but died shortly afterwards, whereby the fund passed to her father as her administrator. It was held that the appointment was good; but in giving judgment the M. R. observed that if the father could have made the appointment available for raising money, and had done so, it would have materially altered his view of the case. On the other hand, in Wellesley *v.* Mornington (2 K. & J. 143), an appointment was made to an only son, who was then in a state of disease from which he died within a year, and the Court held upon all the circumstances of the case as proved by the evidence, that the appointment was made by the father with a view to benefit himself, and was therefore void (see also Gee *v.* Gurney, 2 Coll. 486; Salmon *v.* Gibbs, 3 De G. & Sm. 343).

The result of the above cases seems to be, that an appointment to a child, however young, is not in itself necessarily fraudulent, though the effect may be to give the whole fund to the donee of the power as administrator, but that such an appointment will be held void, if from the facts of the case, as *e.g.*, from the child being in bad health at the time, and likely to die soon, it seems to the Court that the intention of the appointor was to benefit himself and not the appointee. See Henty *v.* Wrey, 21 Ch. D. 332.

Appointment with a view to benefit strangers.

It is equally a fraud on the power if the appointment is made with a view to benefit a stranger, as for instance, upon a secret understanding that the appointee shall re-assign the whole or part of the fund to a stranger (Daubeney *v.* Cockburn, 1 Mer. 626). In Birley *v.* Birley (25 Beav. 299), an appointment was made to two children, who a year afterwards settled the appointed fund on persons who were not objects of the power, the deed containing a recital that when the appointment was made it was understood that the appointees should consider themselves as possessed of the funds upon the trust expressed in the settlement. The appointment was held void. So also in a case where the donee of a power to appoint amongst children, executed an appointment in favour of two of her children, and such appointment was made on a previous understanding that they should resettle the property appointed, firstly for the benefit of themselves, and finally for persons not objects of the power, the appointment was held to be bad (Prior *v.* Prior, 10 Jur. N. S. 603).

If the motive or object of the appointment is to benefit a stranger, it makes no difference that the appointee may be ignorant of such motive or object. Thus, where a married woman, having a power of appointment among her children, appointed the fund by will to her eldest daughter in order that she might thereout benefit her father (the testatrix's husband), it being arranged between the testatrix and her husband that after the death of the former the latter should inform the appointee of the object of the appointment, leaving it in her discretion to carry out her mother's wishes, the appointment was held bad (*In re* Marsden's Trusts, 4 Drew. 594).

In a late case, certain appointments made by a father with a view to prevent the marriage contemplated by one of his daughters, and of which he disapproved, were held to be frauds on the power and void (Topham *v.* Duke of Portland, 1 De G. J. & S. 517; 11 H. L. C. 32; L. R. 5 C. A. 40).

and I. K., their executors, administrators, and assigns, should stand possessed of certain trust funds therein particularly mentioned, Upon the trusts therein declared concerning the same

Suspicion not sufficient to invalidate appointment.

But a mere suspicion that the appointor's motive was to benefit himself or others is not sufficient to invalidate the appointment. Thus, in M'Queen *v.* Farquhar (11 Ves. 467), a tenant for life entered into a contract for sale, but finding that he could not make a good title without exercising a power reserved to him of appointing the estate among all or any of his children, he exercised the power in favour of his eldest son in fee. Then the father and mother (who were entitled respectively to life estates), as well as the son, conveyed the estate to the purchaser in consideration of £8000 paid to the father, mother, and son; it was held that the power was well executed, and that the purchaser must take the title. Lord Eldon observed there was nothing to show that the son was not to receive a due proportion of the money when the contract was afterwards executed by the deed. (See also Green *v.* Pulsford, 2 Beav. 70; Crockforth *v.* Sutcliffe, 25 L. J. Ch. 313; Hamilton *v.* Kirwan, 2 Jo. & Lat. 393; Roach *v.* Trood, 3 Ch. D. 429.)

And, if the appointment is made with a view to secure a benefit to all the objects of the power, the appointment is not bad, although the donee may to some extent participate in such benefit. As where an appointment was made to one of the objects, and the appointor and appointee then executed a deed to enable building leases to be granted, there being no power to grant building leases in the original settlement, and subject thereto the property was re-limited substantially to the old uses, the appointment was held valid (*In re* Huish's Charity, L. R. 10 Eq. 5).

Contemporaneous arrangement.

Nor does it render an appointment bad that there is a contemporaneous arrangement with the appointees, provided that their substantial interests in the property are not thereby diminished. Therefore, where a tenant for life, with a power of selection amongst his children, had received of the trustees part of the trust moneys in breach of trust, and afterwards appointed to his daughters, in exclusion of his son, this money, which had been advanced to him, and a sum of £500, and contemporaneously with the appointment the daughters exchanged the sums so appointed for an estate of the father; the transaction was supported, inasmuch as the estate was not proved to be of less value than the amount given in exchange (Askham *v.* Barker, 17 Beav. 37).

In a case where, on the marriage of a daughter under age, the father made an appointment to her, and by the settlement the appointed money, and also a further sum secured by the father's bond, was settled on the usual trusts for the daughter and her husband, and the issue of the marriage, with an ultimate trust in default of issue for the father, the appointment was held good, on the ground that all that the father took was the husband's marital right, the daughter not being bound. A similar appointment and settlement in the case of another daughter who was of age, was upheld by James, V.-C., on the ground that the father gave a sufficient consideration for the reversionary interest, but the Lord Chancellor on appeal thought the transaction of doubtful validity (Cooper *v.* Cooper, L. R. 8 Eq. 312; 5 C. A. 203).

Under a power of distribution amongst the children, the appointment of one share corruptly does not invalidate the appointment as to the remaining shares (Rowley *v.* Rowley, Kay, 242).

Exclusive appointment may now be made.

Where a power is given to appoint among several objects in such shares as the donee may think fit, but he is not expressly authorized to exclude any one of the objects, it was necessary until lately to give some share, however small, to every object; and if one were excluded the appointment was

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Appointment of a new trustee.

Present state of trust funds.

That there are issue six children, three of age and three under age, and one about to marry.

Witnessing part.

Parents in exercise of power

during the lives of the said A. B. and C. D., and after the decease of the survivor of them the said A. B. and C. D., IN trust for, &c. (*set out fully the trust for issue as husband and wife should jointly appoint*): AND WHEREAS the said I. K. having died, L. M., of, &c., was by an indenture dated the —— day of ——, 18—, indorsed on the said indenture of settlement, appointed to be a trustee of the said indenture of settlement in the place of the said I. K., under a power therein contained for that purpose: AND WHEREAS the investments of the trust funds comprised in the said indenture of settlement have been from time to time varied under a power therein contained for that purpose, and the settled trust funds now consist of, or are represented by, the particulars set forth in the schedule hereunder written: AND WHEREAS there are issue now living of the said A. B. and C. his wife, six children, namely: N. B., O. B., P. B., R. B., S. B., and T. B., of whom the said N. B., O. B., and P. B., have attained the age of twenty-one years, and the said R. B., S. B., and T. B., are under that age, and the said N. B. is about to marry X. Y., of, &c.: AND WHEREAS the said A. B. and C. his wife, are desirous of making such appointment as is hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said A. B. and C. his wife, in exercise of the power for

bad. But by the Act 37 & 38 Vict. c. 37, it is enacted that no appointment to be made after the passing of the Act of any property among several objects shall be invalid at law or in equity on the ground that any object of such power has been altogether excluded, subject to a proviso that the Act shall not apply where there is an express provision declaring the amount from which no object shall be excluded.

Where the object of a power is also entitled to a share in default of appointment an assurance of his share before any appointment is made does not pass a share acquired by him under a subsequent appointment (Sweet apple *v.* Horlock, 11 Ch. D. 745).

Release of testamentary power.

A power to appoint by will may be released by deed, and a covenant by the donee not to exercise the power so as to diminish the share which the covenantee would take in default of appointment is a release *pro tanto*, and good (Davies *v.* Huguenin, 1 H. & M. 730; Coffin *v.* Cooper, 2 Dr. & Sm. 365).

If a donee covenants to appoint a certain sum in favour of one of the objects, the fact that it becomes thereby his interest to comply with the covenant, does not render void a subsequent appointment in accordance with the covenant.

Execution of powers by infants.

An infant cannot execute a power over real estate, except a power simply collateral (Hearle *v.* Greenbank, 3 Atk. 695), but, as regards personalty, he may exercise, otherwise than by will, a power in gross, *i.e.*, a power over property which but for the appointment would belong to some other person. It follows that the ordinary power of appointment among children contained in the marriage settlement of an infant may be exercised by her during infancy (*Re* d'Augiban, 15 Ch. D. 225; Palmer *v.* Locke, 15 Ch. D. 294).

APPOINTMENT UNDER POWER TO CHILDREN.

appoint trust funds (after decease of survivor of them) to all their children equally. Shares of those now of age to vest immediately, shares of infant sons to vest at twenty-one, and shares of infant daughters to vest at twenty-one or marriage.

this purpose given to them by the said indenture of settlement as aforesaid, and of all other powers (if any) them hereunto enabling, hereby APPOINT that the trustees or trustee for the time being of the said indenture of settlement do and shall, from and after the decease of the survivor of them the said A. B. and C. his wife, stand possessed of all the trust funds and property subject to the trusts of the said indenture of settlement, IN TRUST for the said N. B., O. B., P. B., R. B., S. B., and T. B., in equal shares, the shares of the said N. B., O. B., and P. B. to be vested interests in them immediately upon the execution of these presents, and the shares of the said R. B. and S. B. to be vested interests in them respectively upon their respectively attaining the age of twenty-one years, and the share of the said T. B. to be a vested interest in her upon her attaining the age of twenty-one years or marrying (which shall first happen): PROVIDED ALWAYS, that if any or either of them, the said R. B., S. B., and T. B., shall die before attaining a vested interest in his or her share of the said trust funds and property, then, and in every such case, as well the original share of him or her so dying, as also any share accruing to him or her under this clause, shall go and accrue to the said N. B., O. B., and P. B. and the other or others of them the said R. B., S. B., and T. B., in equal shares: PROVIDED ALSO, and it is hereby declared, that it shall be lawful for the said A. B. and C. his wife, at any time during their joint lives, or for the survivor of them during his or her life, by any deed or deeds to revoke either wholly or partially the appointment hereby made, EXCEPT that if the marriage now intended between the said N. B. and X. Y. shall be solemnized within six calendar months from the date hereof, this power of revocation shall not apply to the share of the said N. B. hereunder.

Accruer clause in case of death of any child before attaining a vested interest.

Power of revocation by deed.

Except as to share of son about to marry, if marriage takes place.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. VI.

DEED *of* COVENANT *not to* ERECT *any* BUILDING *on a certain part of* COVENANTOR'S PROPERTY, *and* OBLIGATION *in the sum of* £—— *by way of* DAMAGES *for due* PERFORMANCE *of the same.*

COVENANT NOT TO BUILD ON LAND.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*covenantor*), of the one part, and C. D., of, &c. (*covenantee*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), ALL, &c. (*parcels*), and which hereditaments are more particularly delineated and described in the map or plan thereof drawn in the margin of these presents, and are in such map or plan coloured ——, were conveyed unto and to the use of the said A. B. in fee simple: AND WHEREAS the said C. D. is the owner and occupier of the messuage and lands situate on the —— side of the hereditaments comprised in the hereinbefore recited indenture, and which messuage and land are also delineated and described in such map or plan as aforesaid, and are therein coloured ——, and in order to protect himself and his said premises from annoyance or injury by the owner of the hereditaments comprised in the hereinbefore recited indenture, from the erection of buildings or otherwise, he the said C. D. proposed, and had determined to bid for and use his best endeavours to become the purchaser of the same hereditaments: AND WHEREAS it was afterwards arranged between the said C. D. and A. B., that instead of purchasing or attempting to purchase the hereditaments aforesaid, the said C. D. should permit the said A. B. to become the purchaser thereof, and the said C. D. consented to the said arrangement, and to forego his said intention of bidding for and attempting to become the purchaser of the said hereditaments in favour of the said A. B. upon the terms, and in consideration and under an express agreement, that the said A. B. should in the event which happened of his becoming such purchaser as aforesaid, secure to the said C. D. for and during the period hereinafter mentioned, the same or the like protection from annoyance or injury by the erection of buildings on the hereditaments aforesaid, or on the part thereof which on the map or plan aforesaid is coloured ——, or by any other ways or means as he

Recite that covenantee is owner of adjoining hereditaments, and that to protect himself he had determined to bid for hereditaments which were in fact sold to covenantor.

Arrangement that covenantor should purchase the said hereditaments so sold to him, and enter into covenants with covenantee.

COVENANT NOT TO BUILD ON LAND.

the said C. D. might or would have had if he had carried his said intention into effect, and had himself become the purchaser of the said hereditaments: and for effecting the purposes aforesaid, it hath been further agreed that the said A. B shall enter into the covenant and obligation hereinafter contained: NOW THIS INDENTURE WITNESSETH that, in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B. hereby covenants with the said C. D. that he the said A. B., or any person or persons deriving title under him to the hereditaments so purchased by him as aforesaid, or any part thereof, shall not nor will at any time or times during the joint lives of the said C. D. and —— his wife, or during the life of the survivor of them, erect or set up, or permit to be erected or set up on any part or parts of the said hereditaments or premises comprised in the hereinbefore recited indenture, and in the said map or plan coloured ——, any messuage, erection or building of any class, character, or description whatsoever, but shall and will at all times during such period as aforesaid, maintain and keep that part of the said hereditaments aforesaid which in the said map or plan is coloured —— in its present open state and condition:

Covenantor agrees not to build on lands purchased by him for a certain period;

AND FURTHER that the said A. B., or any such other person or persons as aforesaid, shall not nor will, at any time during such period as aforesaid, carry on, or permit to be carried on upon the said last-mentioned hereditaments or any part thereof, any trade, business, or employment whatsoever, or do or permit to be done therein any other act or thing which may be an annoyance to the said C. D. and his wife, or either of them, or to any tenant or occupier under them, him, or her of the said hereditaments in the said map or plan coloured ——, or any part thereof, or which shall in any manner affect or hinder their, his, or her possession or enjoyment of the said hereditaments, in like manner in all respects, as the said hereditaments are now held and enjoyed by him the said C. D.:

nor carry on any annoying business on such premises for the like period.

AND FOR THE DUE PERFORMANCE by the said A. B., and such person or persons as aforesaid, of the covenants hereinbefore contained, the said A. B. hereby binds himself unto the said C. D., in the sum of £——, as or by way of liquidated damages, now mutually assessed by them the said parties hereto, for the non-performance of the aforesaid covenants, or any or either of them, and not by way of penalty.

Sum recoverable as liquidated damages on breach of aforesaid covenants.

IN WITNESS, &c.

No. VII.

DEED *of* ARRANGEMENT *between several Persons interested in* REAL ESTATES *under a* WILL *and in the proceeds of the* SALE *thereof, for the purpose of confirming certain Mortgages executed by the* TRUSTEES *of the* WILL, *and for giving them authority to* SELL *prior to the time appointed by the* TESTATOR.

DEED OF CONFIRMATION AND ARRANGEMENT.

Parties.

Bequest of legacies which testator charged on his real estates, and powers to trustees to charge and demise the real estates to secure their payment.

Devise of real estates to wife during her widowhood.

And subject thereto to sell real estate.

Moneys arising from the sale to be applied in payment of the said legacies, and moneys which may be charged

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*widow and relict of G. H., late of, &c., deceased*), of the first part, C. D., of, &c., of the second part, E. F., of, &c., of the third part, G. H., of, &c., of the fourth part, L. M., of, &c., of the fifth part, N. O., of, &c., of the sixth part, and U. X., of, &c. (*surviving trustee of will*), of the seventh part: WHEREAS the said G. H., deceased, duly made and executed his last will and testament in writing, dated the —— day of ——, and thereby gave and bequeathed to —— and —— the sum of £—— apiece, and both the said legacies he charged exclusively on his real estates; and for the better enabling his trustees thereinafter named to pay the said legacies, he empowered them to charge his real estates, or any of them, with any sum or sums equal in amount to the said legacies, and to demise the same real estates, or any part or parts thereof, for any term or terms of years or otherwise as they should think fit for securing the payment of such sum or sums of money; and the said testator by his said will devised all his real estates unto the said U. X. and also Y. Z., their heirs and assigns, upon trust to pay the rents and profits thereof unto his the said testator's wife, the said A. B., during her widowhood, and from and immediately after the decease or marriage of his said wife, which should first happen, the said testator directed that his said trustees should sell, and absolutely dispose of his said real estates as therein mentioned; and the said testator by his said will directed that his said son C. D. should be allowed to purchase certain portions of the said real estates on the terms therein mentioned; and the said testator declared that the said trustees should hold the moneys to arise from such sale or sales upon trust in the first place to pay and satisfy the before-mentioned legacies, so far as the same might then remain unsatisfied, and also all such sums as might have been charged

DEED OF CONFIRMATION AND ARRANGEMENT.

on the real estates for their payment.

upon his real estates by way of mortgage as aforesaid for the purpose of enabling his said trustees to pay the before-mentioned legacies, and all interest due thereon, together with all expenses attending such sale or sales, and all other expenses incident to the performance of the trusts aforesaid, and after full payment thereof, upon trust to pay and divide the residue of the said trust moneys unto and amongst his the said testator's children, and the said E. F., G. H., L. M., and N. O. in equal shares: And whereas the said testator died on the —— day of ——, without having revoked or altered his said will, which was duly proved by the executors thereof, on the —— day of ——, in the —— court of ——: And whereas the said A. B. has continued a widow ever since the death of the said G. H.: And whereas all the said children of the said G. H. have respectively attained the age of twenty-one years: And whereas, pursuant to the power of mortgaging, given or limited to them the said U. X. and Y. Z. by the said recited will of the said G. H., deceased, as aforesaid, and in consideration of the sum of £200 by —— paid to the said U. X. and Y. Z. they the said U. X. and Y. Z. on the —— day of —— surrendered out of court into the hands of the lords of the manor of ——, all and singular the copyhold or customary hereditaments hereinafter described (being a portion of the hereditaments devised by the said recited will of the said G. H., deceased), to the use of the said ——, his heirs and assigns, subject nevertheless to a condition for making void the said surrender, on payment by the said U. X. and Y. Z. their heirs, executors, administrators, or assigns, or other the trustees or trustee for the time being of the said will of the said G. H., deceased, unto the said ——, his executors, administrators, and assigns, of the sum of £200, together with interest thereon at the rate of £5 per cent. per annum, on the —— day of ——, then next ensuing: And whereas by an indenture dated the —— day of ——, and made between the said U. X. and Y. Z. of the one part, and —— of the other part, in consideration of the sum of £300 to the said U. X. and Y. Z. paid by the said ——, and in further pursuance of the power of mortgaging for this purpose limited to them by the said recited will of the said G. H., deceased, as aforesaid, all and singular the freehold hereditaments hereinafter described and assured, or expressed so to be, were demised by the said U. X. and Y. Z. unto the said ——, his executors,

Residue of trust moneys directed to be divided between testator's children.

Death of testator and probate of his will.

That testator's wife has not married again, and that all children have attained twenty-one.

Surrender of copyholds by trustees of will to secure a sum of money pursuant to power in the will for this purpose.

Pursuant to same power, demise of freeholds to secure a further sum.

administrators, and assigns, for the term of two thousand years to be computed from the date of the indenture now in recital, subject to the proviso contained in the same indenture for making void the said term of two thousand years, on payment by the said U. X. and Y. Z., their heirs, executors, administrators, or other the person or persons interested in the said hereditaments and premises under or by virtue of the limitations contained in the said recited will of the said G. H., deceased, or any or either of them, unto the said ——, his executors, administrators, or assigns, of the sum of £300, with interest for the same after the rate aforesaid, on the —— day of —— then next: AND WHEREAS the said Y. Z. died on the —— day of ——: AND WHEREAS by an indenture dated the —— day of ——, and made between the same several persons as are parties to these presents and ——, in consideration of the sum of £500 to the said U. X. paid by the said —— by the direction of the several persons parties thereto of the first six parts, all and singular the real estates devised by the said recited will of the said G. H., deceased, have been assured by the same several persons parties thereto, unto and to the use of the said ——, his heirs and assigns, subject to the several hereinbefore recited incumbrances affecting the said real estates, or certain parts thereof as aforesaid, and also subject to the proviso in the indenture now in recital contained for redemption of the said hereditaments and premises on payment by the said several persons parties thereto of the first six parts, or some or one of them, or the heirs, executors, administrators, or assigns of them, or some or one of them, unto the said ——, his executors, administrators, or assigns, of the sum of £500, and interest thereon after the rate of £5 per cent. per annum, as therein mentioned: AND WHEREAS all the principal moneys secured by the said recited surrender and indentures respectively, are still respectively due and owing on the security of the same surrender and indentures respectively: AND WHEREAS the said several persons parties hereto of the first six parts, are desirous of confirming the said surrender and the firstly hereinbefore recited indenture, and of expressly declaring that the same respectively shall be good and effectual securities for the several sums and interest by the same surrender and indenture respectively secured, or expressed so to be, according to the true intent and meaning thereof, respectively, and that, subject

Death of one of trustees of will.

Surviving trustee and all persons beneficially interested mortgage the real estate comprised in will (subject as aforesaid), to secure a further sum.

That principal moneys are due.

Desire of parties beneficially interested to confirm the two first securities, and that trustee shall hold the real estate on the trusts after mentioned.

DEED OF CONFIRMATION AND ARRANGEMENT.

thereto, the said U. X., his heirs and assigns, shall hold the said real estates so devised by the said recited will of the said G. H., deceased, as aforesaid, upon and for such trusts, intents, and purposes as are hereinafter contained or referred to concerning the same: NOW THIS INDENTURE WITNESSETH that, for effectuating the said desire, the said several persons parties hereto of the first six parts, do hereby respectively, in all respects, ratify and confirm the said recited surrender and the said recited indenture of the —— day of ——, and all and singular the charges and estates thereby respectively created and granted, on and in the several hereditaments and real estates in the said surrender and indenture respectively contained, and do hereby respectively in all respects declare that the said surrender and the said indenture of the —— day of ——, shall be and continue good and effectual securities for the several principal sums and interest thereby respectively secured, or expressed so to be, according to the true intent of the said surrender and indenture respectively: AND THIS INDENTURE ALSO WITNESSETH, that for further effectuating the said desire they the said several persons, parties hereto of the first six parts, do hereby respectively declare, that the said U. X., and other the trustees or trustee for the time being of the said recited will of the said G. H. deceased, shall henceforth stand seised of and interested in the several freehold and copyhold or customary hereditaments hereinafter described or referred to, that is to say (*here set out the freehold and copyhold parcels*): AND ALSO all and singular other the real estate and hereditaments (if any) devised by the said recited will of the said G. H., deceased, upon trust that the said trustee and trustees do and shall, as soon as and whensoever he or they may think fit, and either during the widowhood or at any other time during the life of the said A. B., or subsequent thereto, or to any other event, at his and their own absolute discretion, and without the consent or concurrence of any other person or persons, absolutely sell and dispose of the said freehold and copyhold or customary hereditaments, real estate and premises, hereinbefore described or referred to, either together or in lots, and either by public auction or private contract, and either with or without special conditions or stipulations relative to title or otherwise, with power for the said trustee or trustees to buy in the same, or any of them, at any sale by auction, or to rescind any contract

Confirmation by parties, beneficially interested of two first securities.

Declaration and arrangement that trustees shall hold real estates in trust to sell the same at their discretion.

for the sale thereof, and to resell the same from time to time without being answerable for any loss or diminution in price, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things which the said trustee or trustees shall think proper for completing any such sale, and do and shall, with and out of the moneys to arise from any such sale or sales as aforesaid, in the first place, pay the costs and expenses incurred in or about the same or otherwise in relation to the premises, and shall in the next place pay and discharge all the debts and incumbrances which may then be charged on or affect the hereditaments and premises so to be sold as aforesaid: and shall invest the residue of the said moneys in his or their name or names in the parliamentary stocks or public funds of the United Kingdom, or at interest on government or real securities in England or Wales (but not in Ireland), and no other mode of investment: with power for the said trustees or trustee from time to time at their or his discretion, to vary the said investments into or for others of the same or like nature: And do and shall stand possessed of the said residuary moneys, stocks, funds, and securities, and the income thereof, upon such trusts as are by the said recited will of the said G. H., deceased, declared and contained of and concerning the moneys to arise from the sale of the said testator's real estates: And it is hereby declared that in the event of the said real estates or any of them being sold at any time previous to the time appointed by the said recited will of the said G. H., deceased, for the sale thereof, the income of the moneys arising from such sale or sales as aforesaid shall go and be applied in such manner as the rents and profits of the said hereditaments so to be sold are directed by the said will to go and be applied between the actual period of sale and the time appointed for the sale thereof as aforesaid: And it is hereby further agreed and declared that (subject and except so far as the provisions of these presents, or any of them, are expressly inconsistent with the provisions of the said recited will in this behalf) all and singular the real estate of the said testator, and the rents and profits thereof, shall be held upon and for such trusts, intents, and purposes as are in the said recited will expressed and declared of and concerning the same.

In witness, &c.

And shall stand possessed of moneys arising from the sale after payment of the costs of sale and the debts for the time being, affecting the hereditaments.

To invest the same.

With power to vary the securities as they may think fit.

And to apply the trust moneys, &c. and the annual income according to the trusts declared concerning such moneys in the said will.

Application of annual income in the event of a sale before the time appointed by the will.

No. VIII.

APPOINTMENT OF STEWARD.

APPOINTMENT *of a* STEWARD *of large* LANDED ESTATES.

Parties. Agreement to appoint steward.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. F., of, &c., and G. H., of, &c., of the third part: WHEREAS the said A. B. hath agreed to appoint the said C. D., and the said C. D. hath agreed to be the steward or receiver and general agent of the estates of the said A. B., situate in the county of ——, upon and under the terms and stipulations hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the premises, he the said A. B. doth hereby constitute and appoint the said C. D. to be the steward or receiver and general agent of and for all the lands, hereditaments, and estates of him the said A. B., situate, lying, and being in the county of —— (save and except the manors or lordships of him the said A. B., in the said county, and the courts within the same), with power for the said C. D. for and in the name of the said A. B., to sue for, recover, and receive by all lawful ways and means whatsoever, of and from the present and future tenants and occupiers of the said lands, hereditaments, and estates, and also of and from all other persons liable to pay the same, all the rents, fee farm rents, rent-charges, issues, and profits now in arrear and unpaid, and which shall hereafter become due or arising out of, for, or in respect of the same lands, hereditaments, and estates, or any of them, or any part thereof (save and except the fees, perquisites, and advantages to the office of steward of the said manors so excepted as aforesaid appertaining): AND upon nonpayment of the same, or any part thereof respectively, to enter and distrain upon the hereditaments and premises liable thereto, and the distress and distresses then and there found, to take, lead, drive away, and impound, and in pound to detain and keep or otherwise to sell and dispose of the same according to due course of the law; AND also to commence or institute such actions or other proceedings as to the said C. D. may seem proper for the recovery of the said rents, issues, and profits, and for recovering, receiving, obtaining, and getting possession of

Witnessing part.

Appointment of steward,

with power to demand rents, &c.;

to distrain, &c.;

to bring actions,

APPOINTMENT OF STEWARD

the said lands, hereditaments, and estates, or any of them, and the same to prosecute and to discontinue, or otherwise to act therein as he the said C. D. shall think proper or be advised: And upon receipt of the same rents, fee farm rents, rent-charges, issues, and profits, or any part thereof, for him the said A. B. to give effectual receipts and discharges for the same: And also from time to time, as the said C. D. shall think proper, to sell and dispose of any timber or underwood growing and being upon the said lands, hereditaments, and estates, or any part thereof, and to enter into and execute all such contracts and agreements as may be expedient and proper to be entered into for effecting such sale or sales: And also to sign and give effectual releases and discharges for the sum or sums of money which shall or may arise or become payable for and in respect of any such sale or sales: And also to empower the respective purchasers of all or any of such timber and underwood by themselves, or their agents or workmen, to enter into and upon the hereditaments whereon the same shall be growing or be, and with or without horses, carts, and carriages, to carry away the same, and to make sawpits and charcoal pits, and to do all such other acts as shall be necessary for converting and managing the said timber and other trees on such convenient and proper places as shall be from time to time assigned and set out by the said C. D. for that purpose: And also, from time to time, in the name of the said A. B., to enter into and upon, and inspect and survey all the said lands, hereditaments and estates at his free will and pleasure, and to view, search, and see the state and condition, and wants of repair or cultivation of the same, and of the buildings, hedges, fences, and ditches upon and belonging to the same, And to repair and to give orders, and enter into any contract for employing any person or persons in repairing the same, And also for and in the name of the said A. B. to effect such policy or policies for insuring the buildings upon the said estates or any of them from damage or destruction by fire, and in or for such sum or sums of money and at such annual premiums as the said C. D. shall from time to time think proper: And also for and in the name of the said A. B., and as his act or deed, from time to time to enter into and execute any contract or contracts for any lease or leases, or for the renewal of any existing lease or

to give receipts, &c.

to sell timber;

to do repairs and insure;

to enter into contracts for leases, &c.;

APPOINTMENT OF STEWARD.

leases of the said hereditaments, or any part or parts thereof, at and under such rents and subject to such covenants and conditions as to the said C. D. shall seem meet, and to accept surrenders of leases and to make allowances to tenants from time to time as occasion shall require or the said C. D. shall think proper: And generally to inspect, manage, oversee, and superintend all and singular the said lands, hereditaments, and estates, And to do any act, matter, or thing for the improving, bettering, preserving, and supporting the same and the income thereof in the most beneficial manner to the best advantage, and as the said C. D. shall in his judgment and according to his discretion, without being answerable for the exercise of such judgment and discretion, think proper: AND THE SAID A. B. doth hereby give and grant unto the said C. D. full power and authority from time to time, whilst and so long as he shall remain in the said office of steward, receiver, and general agent as aforesaid, to appoint any person whomsoever to be a bailiff under him the said C. D., for and in respect of the said lands, hereditaments and estates, or any part thereof, and to allow to such bailiff for his salary any sum not exceeding the annual sum of £——, to be paid to such bailiff at such times and in such manner as to the said C. D. shall seem fit, and to allow to such bailiff so much hay, corn, straw, and other provender as shall be requisite and sufficient for the keep and maintenance of one horse: AND ALSO from time to time to remove such bailiff, and to appoint any other person in his stead or place, when and so often as to him the said C. D. shall seem meet: And the said A. B. doth hereby promise and agree to ratify and confirm, and doth hereby ratify and confirm all and whatsoever the said C. D. shall lawfully do or cause to be done in or about the premises: AND THIS INDENTURE FURTHER WITNESSETH that, in consideration of the premises, the said A. B. and C. D. mutually covenant as follows (that is to say):

and generally to manage estates.

Power to steward to appoint bailiff, and to pay him salary and make him certain allowances.

Second witnessing part.

Mutual covenants by landlord and steward, that steward may occupy house rent free.

THAT the said C. D., so long as he shall be continued in the said office of steward or receiver and general agent, shall and may occupy, possess, and enjoy all that messuage, tenement, or dwelling-house, garden, and premises, commonly called ——, situate at ——, aforesaid, belonging to the said A. B., and now or late in the occupation of ——, without paying any rent, or rates, or taxes, for or in respect of the same, and with such allowance of wood for repairs and firing as is usual in similar cases to be allowed to a resident steward.

APPOINTMENT OF STEWARD.

Salary of steward, and allowances to be made to him.

THAT the said C. D. shall receive the annual sum or salary of £——, clear of all taxes or deductions (except the income tax), for his care and trouble as such steward or receiver and general agent of the said lands, hereditaments, and estates as aforesaid, out of which salary he shall pay any clerk or other assistant (except the bailiff to be so appointed by him as aforesaid) whom he may think proper to appoint to assist him in conducting the affairs of the said lands, hereditaments, and estates.

Steward to have provender for two horses.

THAT the said C. D. shall also be entitled to or allowed so much hay, corn, straw or other provender as shall be requisite or necessary for the keeping and maintaining of two horses.

Steward to apply moneys received by him,

first, in paying his salary, &c., and salary of bailiff;

next in payment of expenses of collecting rents, &c.,

and of rates and taxes, &c.;

THAT the said C. D. shall yearly, and every year during the continuance of his said office, apply the moneys which shall come to his hands by virtue of these presents, and of the powers and authorities hereby vested in him, in manner following (that is to say): IN the first place, in paying or retaining to himself thereout, from time to time, the said annual salary or sum of £——, and the cost of such maintenance and keep for two horses as aforesaid, and also in payment of the salary of the bailiff, to be so from time to time appointed by the said C. D. as aforesaid; and in the next place, in payment of all costs, charges, and expenses, which he the said C. D. shall or may sustain, incur, or be put unto, in or about the collecting and receiving of the rents and profits of the said lands, hereditaments, and estates, or any part thereof, in bringing, instituting, and prosecuting, or in defending any action or actions relating to the said lands, hereditaments, and estates, rents and moneys aforesaid, or otherwise in managing and superintending the said lands, hereditaments, and estates, and in the execution of the several powers and authorities vested in him the said C. D., under or by virtue of these presents: And also in payment, from time to time, of all rates, taxes, assessments, and other outgoings to be from time to time payable in respect of the said lands, hereditaments and estates, or any part or parts thereof, and which the said A. B., from time to time, shall be liable or bound to pay, and also of the premiums of any such insurance or insurances as shall be from time to time effected upon the buildings upon the said lands, hereditaments and estates, or

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and expenses of repairs.

any of them as aforesaid: And also in payment from time to time of the expenses to be incurred on account of the repairs which shall from time to time be made upon any part or parts of the said lands, hereditaments, and estates, and which the respective tenants thereof shall not be liable to pay: And that from and after full payment and satisfaction of all such sum or sums of money, costs, and expenses respectively as aforesaid, the said C. D. shall from time to time pay all the clear surplus of the moneys which shall come to his hands by virtue of or under these presents unto the said A. B., or to the account of the said A. B. at Messrs. —— & Co., his bankers, at ——, or such other bankers or otherwise as the said A. B. shall from time to time direct: PROVIDED ALWAYS, that the said C. D. shall not at any one time retain in his hands out of the moneys to be received by him by virtue of or under these presents, any further or greater sum than the sum of £—— (over and above the amount then actually due and owing for or in respect of the management of the said lands, hereditaments, and estates under or in execution of the powers aforesaid) for meeting the current expenses of the said lands, hereditaments, and estates, or the management thereof.

Surplus to be paid to landowner.

Steward not to retain in his hands above a certain sum at any one time.

That steward shall faithfully perform his duties,

THAT the said C. D. shall well and faithfully and to the best of his ability execute all the powers, authorities, and trusts hereinbefore reposed or vested in him, and shall from time to time well and faithfully account to the said A. B. for all moneys to be received by him by virtue of these presents.

and keep proper books of account.

THAT the said C. D. shall keep proper books of account in which shall be entered full and true particulars of all sums of money received for or in respect of the said lands, hereditaments, and estates, and also of all payments and allowances made for or on account of the same, and which books of account shall be open to the inspection of the said A. B. at such times and places, and in such manner as he shall direct; and that the said C. D. shall once in every year, or oftener if requested by the said A. B. furnish to the said A. B. a clear statement in writing of the income and expenditure of, upon, or in respect of the said lands, hereditaments, and estates, with all such particulars relating to the same, and in such manner as the said A. B. shall from time to time direct.

Power to either party

THAT if the said A. B. shall at any time be desirous of

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to determine appointment by notice.

removing the said C. D. from the said office of steward or receiver and general agent of his said lands, hereditaments, and estates, and shall give notice of such his desire to the said C. D., either personally or by writing under his hand, to be left for the said C. D. at the said dwelling-house to be so occupied by him at —— aforesaid, or if the said C. D. shall be desirous of retiring from the said office, and shall give to the said A. B. notice of such his desire, either personally, or by writing under his hand, to be left for the said A. B. at his mansion of ——, in the county of ——: THEN, and in either of the said cases, at the expiration of six calendar months from the giving or leaving of such notice as aforesaid, or in case from any cause the said C. D. shall become incapable of acting in the said office, then, and in such last-mentioned case, upon the happening of such contingency, the said C. D. shall cease to be such steward or receiver and general agent as aforesaid, and all and singular the powers, and authorities, and trusts hereinbefore reposed or vested in the said C. D. shall cease and determine, and then and in such respective cases, and also on the determination of his said office by any other means or in any other manner, all such accounts and reckonings shall be made and taken as are usual in like cases; and all books of accounts, rentals, and other documents in the possession or custody of the said C. D., touching or concerning the said estate, shall be delivered up to the said A. B., or to such person or persons as he shall direct.

Arbitration clause.

THAT in case any dispute or difference shall arise between the said A. B. and C. D. touching or concerning the construction of, or in anywise relating to these presents, or anything herein contained, such dispute or difference shall be referred to the arbitration of two indifferent persons, one to be chosen by the said A. B. and the other by the said C. D.; and in case such two persons cannot agree in their arbitration, then the same shall be referred to such third person as an umpire between them as the said first-mentioned referees shall for that purpose agree upon and appoint, and the decision of such two first-mentioned referees, or of their umpire, shall be binding and conclusive between all the said parties to these presents.

Bond by steward and his sureties for faithful perform-

AND LASTLY, for the performance of all the covenants hereinbefore contained on the part of the said C. D., and the faithful execution of all the powers, authorities, and

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ance of duties.

trusts hereinbefore reposed or vested in the said C. D., and for the well and faithfully accounting by him the said C. D. to the said A. B., for all moneys to be by him the said C. D. received by virtue of or under these presents, the said C. D. and the said E. F. and G. H. as the sureties for him the said C. D., jointly and severally bind themselves unto the said A. B. in the sum of £——.

In witness, &c.

No. IX.

DEED OF SEPARATION.

DEED *of* Separation *between* Husband *and* Wife. Covenant *by* Husband *to permit his* Wife *to live separate;* Covenants *by the* Trustees *to indemnify the* Husband *against all obligations to* Maintain *his* Wife, *or to answer for her* Debts (*a*). Provision *as to* custody *of* Children.

Parties

Recite that unhappy differences have arisen.

Covenant by trustee to indemnify against wife's debts, a valuable consideration.

A similar covenant by the wife alone a sufficient consideration since the Act of 1882, *semble.*

To what extent a voluntary covenant by husband, in a separation deed, is valid.

THIS INDENTURE, made, &c., Between A. B., of, &c. (*husband*), of the first part, C. B., of, &c. (*wife of the said A. B.*), of the second part, and E. F., of, &c. (*trustee*), of the third part: Whereas unhappy differences have arisen between the said A. B. and C. his wife, and they have consequently agreed to live separate from each other for the future, and to enter into such arrangement as is hereinafter expressed: And whereas the said A. B. and C. his wife have two children, viz., L. B., now of the age of —— years, and M. B. now of the age of —— years: NOW THIS INDENTURE WITNESSETH, that in pur-

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(*a*) A covenant by the trustee to indemnify the husband from the wife's debts, is a sufficient consideration to support a covenant entered into by the husband in a separation deed against his creditors (Stevens *v.* Olive, 2 B. C. C. 90; Worral *v.* Jacob, 3 Mer. 226). Previously to the Married Women's Property Act, 1882, a covenant by the wife alone, unless she had separate property, was inoperative, and therefore no consideration for the husband's covenant (Walrond *v.* Walrond, Johns. 18). But by that Act a wife is empowered to enter into contracts, and such contracts bind any separate estate which she may afterwards acquire, and it is apprehended therefore that her covenant will in future be deemed a valuable consideration.

A voluntary covenant by the husband, though liable to be avoided by his creditors under 13 Eliz. c. 5, is good against himself, if entered into by deed, but could not be enforced even against him if in writing only, or otherwise imperfect at law.

suance of the said agreement, and in consideration of the premises, and of the covenant hereinafter contained on the part of the said E. F., the said A. B. hereby covenants with the said C. B., and also by way of separate covenant with the said E. F. as her trustee, that the said C. B. shall and may at all times hereafter, notwithstanding her coverture, live separate and apart from the said A. B., as if she were a *feme sole*, and shall henceforth be freed from the control and authority of the said A. B., and shall reside in such place or places and in such manner as she shall think fit, and that the said A. B. will not at any time hereafter require her to live with him, or institute any legal proceedings or take any other steps whatsoever for that purpose, and will not in anywise molest or interfere with the said C. B. in her manner of living or otherwise: AND ALSO that he the said A. B. will, during the joint lives of himself and the said C. B., if they shall so long live separate from each other (*a*), pay to the said E. F. the annual sum of £—— in trust for the said C. B. for her sole and separate use, and so that she shall not have power to dispose thereof in the way of anticipation, the said annual sum to be paid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first thereof to be made on the —— day of —— next: BUT so nevertheless that the said annual sum shall cease if the marriage between the said A. B. and C. B. shall at any time hereafter be dissolved by a court of competent jurisdiction (*b*): AND ALSO that all property (if any) of the said C. B. which, but for this covenant, would belong to or be receivable by the said A. B. in her right, shall be held and enjoyed by her the said C. B. for her sole and separate use: AND THAT if the said C. B. shall die in the lifetime of the said A. B. all property (if any) of the said C. B., which but for this covenant would on her death go and belong

Covenant by husband that his wife may live separate,

that he will not molest her.

To pay an annuity to trustee for wife during joint lives if separation so long continues;

but to cease if marriage is dissolved.

That all property of wife shall be for her separate use.

(*a*) There are cases in which it would be prudent on the part of the husband to stipulate that the payment shall continue so long only as the wife remains chaste. In such case the words "and the said C. B. shall continue to lead a chaste life" should be introduced here. Such a condition could not be insisted on in the absence of an express stipulation.

(*b*) In the absence of this proviso, the Court would have power, after a decree for dissolution of the marriage, to relieve the husband either wholly or partially from the covenant, under 22 & 23 Vict. c. 61, s. 5. See Worsley *v.* Worsley, L. R. 1 P. & M. 648; Bullock *v.* Bullock, 2 *ib.* 389. If the annual sum is made payable so long only as the wife remains chaste, this proviso will be omitted as unnecessary.

Provision made for wife by separation deed liable to be altered by Court in the event of a divorce.

Second witnessing part.

Covenants by trustees to indemnify husband against debts of wife;

and that wife shall not bring any action, &c., for compelling him to support her.

Agreement as to custody of children.

to the said A. B. in his marital right, or as her administrator, or as tenant by the curtesy, shall go to the person or persons and in the manner to whom and in which the same would have gone if the said A. B. had died in her lifetime: And also that he the said A. B. will from time to time, at the cost of the person or persons requiring the same, do and execute all such acts, deeds, and things, for the purpose of carrying into full effect the provisions of these presents, as by the said C. B. or the said E. F., shall be reasonably required: AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement, and in consideration of the premises, the said C. B. and also the said E. F. as her surety hereby jointly and severally covenant with the said A. B. that they, the said C. B. and E. F., will at all times hereafter, during the continuance of the said separation, keep indemnified the said A. B. from and against all debts and liabilities hereafter to be contracted or incurred by the said C. B., whether for her wearing apparel, maintenance, support, or otherwise, and from and against all claims and demands for or on account of the same: And further, that the said C. B., or any person on her behalf, shall not nor will at any time hereafter commence or prosecute any action or other proceeding for compelling the said A. B. to cohabit with her the said C. B. or to allow her any support, maintenance, or alimony (except the said annual sum hereinbefore covenanted to be paid to her) (*c*): And it is hereby agreed, that the said A. B. shall have the custody of the said L. B., and the said C. B. shall have the custody of the said M. B., and that the said A. B. shall have access to the said M. B., and the said C. B. shall have access to the said L. B. under such arrangements as shall from time to time be made between them for that purpose, or if they shall be unable to agree, then under such arrangements as shall be made by the said E. F. (*d*).

In witness, &c.

Wife's covenant to accept allowance for alimony binding on her, notwithstanding subsequent judicial separation.

Who is

(*c*) This covenant is binding on the wife, although there may be afterwards a decree for judicial separation on account of the husband's adultery (Gandy *v.* Gandy, 7 P. D. 169). But if there is a dissolution of the marriage, the Court can vary the deed, and order a larger sum for alimony, under 22 & 23 Vict. c. 61, s. 5 (Morrall *v.* Morrall, 6 P. D. 98).

(*d*) The father has at common law the right to the custody of all his children. But by the stat. 2 & 3 Vict. c. 54, power was given to the Court

No. X.

ASSENT *by an* EXECUTOR *to* BEQUESTS *of* LEASEHOLD *and other* PERSONAL ESTATE.

ASSENT OF EXECUTOR.

Executor declares that all debts have been paid, and assents to bequests.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c., being the executor of the will of X. Y., late of, &c., which will is dated the —— day of ——, 18—, and was proved by me in the principal Registry attached to the Probate Division of the High Court of Justice on the —— day of ——, 18—, hereby declare that the funeral and testamentary expenses and debts of the said X. Y., so far as the same have come to my knowledge, have been paid and satisfied, and I assent to the bequests of leasehold property and other personal estate made by the said will.

IN WITNESS, &c.

No. XI.

APPOINTMENT *by an* INFANT *of a* GUARDIAN *of his* PERSON *and* ESTATE (*a*).

APPOINTMENT BY INFANT OF GUARDIAN.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*infant*), being now of the age of —— years or thereabouts,

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entitled to the custody of the children after the separation of the parents.

of Chancery to order an infant under the age of seven years to be delivered into the custody of his mother. By a recent Act (36 Vict. c. 12) the power of the court is extended to the age of sixteen years, and the court has also power to make regulations as to the access of the father or other guardian. The Act also provides that no agreement contained in any separation deed made between the father and mother of an infant shall be held invalid by reason only of its providing that the father shall give up the custody or control of the infant to the mother, but with a proviso that no court shall enforce such agreement if it will not be for the benefit of the infant to give effect thereto. As to the principles which guide the court in cases under the Act, see *In re* Taylor, 4 Ch. D. 157; *Re* Besant, W. N. 1878, p. 119. Before the Act an agreement that the wife should have the custody of the children had been held void (Vansittart *v.* Vansittart, 4 K. & J. 62; Walrond *v.* Walrond, Johns. 18).

Infant of age of 14 years may appoint guardian.

(*a*) When an heir in socage has no testamentary guardian, he may at the age of fourteen years choose a guardian for the remainder of his minority (Co. Litt. 78 b.; Macpherson on Infants, 76). The election by an infant of his own guardian does not supersede the authority of the Court of Chancery, and as it is doubtful what are the powers of a guardian so elected, this course is seldom resorted to.

APPOINTMENT BY INFANT OF GUARDIAN.

hereby appoint C. D., of, &c. (*guardian*), to be the guardian of my person and estate until I shall attain the age of twenty-one years.

As WITNESS my hand this —— day of ——, 18—.

(Signed) A. B.

No. XII.

GIFT OF COTTAGES FOR ALMSHOUSES.

DEED *of* GIFT *of* COTTAGES *to* TRUSTEES *to be used as* ALMSHOUSES (*a*).

Donor grants to rector and

KNOW ALL MEN BY THESE PRESENTS, that A. B., of, P—— Court, in the county of ——, Esq., doth by this deed

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Conveyance of land for charitable purposes must be enrolled, &c.

(*a*) The Act 9 Geo. 2, c. 36, enacts that no hereditaments, or personal estate to be laid out in the purchase of hereditaments, shall be given, conveyed, or settled, or anyways charged or incumbered in trust or for the benefit of any charitable uses whatsoever, unless such gift or settlement be made by deed sealed and delivered in the presence of two credible witnesses, twelve calendar months before the death of the donor, including the days of execution and death, and enrolled in Chancery within six calendar months from the death, and unless the same be made to take effect in possession for the charitable use, and be without any power of revocation, reservation, trust, &c., for the benefit of the donor or of any persons claiming under him. The Act contains a proviso that purchases for valuable consideration shall not be avoided by the death of the grantor within the twelve calendar months. See also the Acts 24 Vict. c. 9, and 25 & 26 Vict. c. 17, amending and explaining the previous Act in some respects.

Powers of Charity Commissioners.

By the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), amended by the subsequent Acts of 1855, 1860, and 1869 (18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; and 32 & 33 Vict. c. 110), the management of charities has been placed under the control of a Board, called "The Charity Commissioners for England and Wales," to whom ample powers are given for that purpose. The Board may require the acting trustees to render accounts and statements in relation to the charity (sect. 10), and may authorise sales, exchanges, and leases, of the charity property (sects. 21, 24, 26). By sect. 15 of 18 & 19 Vict. c. 124, the secretary for the time being of the Board is a corporation sole under the title "The Official Trustee of Charity Lands;" and by the combined operation of the following provisions, viz., 16 & 17 Vict. c. 137, sects. 48, 49; 18 & 19 Vict. c. 124, s. 15; and 23 & 24 Vict. c. 136, s. 2, it is provided that, where any land holden upon any trust for a charity is vested in any persons other than the persons acting in the administration and application of the rents, or where there are no trustees, or the trustees or any of them are unwilling to act, or it is uncertain in whom such land is vested, or all or any of the persons in whom it is vested cannot be found, or are under age, lunatic, or of unsound mind (whether found such by inquisition or not), or otherwise incapable of acting, or are out of the jurisdiction, or where by reason of the reduced number of trustees or other causes a valid appointment of new

GIFT OF COTTAGES FOR ALMS-HOUSES. — church-wardens

sealed and delivered by him in the presence of two credible witnesses and intended to be enrolled in the High Court of Justice (Chancery Division) within six calendar months after the execution hereof, pursuant to the Act of Parliament passed in the ninth year of the reign of King George the Second, chap. 26, freely and voluntarily convey unto the Rev. C. D., the present rector of the parish of P——, in the county of ——, and E. F. and G. H., both of P—— aforesaid, farmers (the present church-wardens of the said parish), and their heirs, ALL those six cottages, tenements, or almshouses, now being erected by the said A. B. on land belonging to him, situate in the parish of P—— aforesaid, and adjoining the turnpike road leading from —— to ——, and the garden ground or land belonging and adjoining to the said cottages, all of which premises contain together ——, or thereabouts, and the same are delineated in the map or plan drawn in the margin of these presents, and are therein coloured pink: To HOLD the same unto and to the use of the said A. B., C. D., E. F., and G. H., in fee simple, IN trust to permit the same to be for ever hereafter occupied by aged or infirm persons, inhabitants of the said parish of P——, according and subject to the rules, regulations and provisions for the administration and management of the charity

Cottages.

Habendum to rector and church-wardens to use of donor, and rector and church-wardens in fee,

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trustees cannot be made, or where by reason of the expenses incident to the appointment of new trustees and the conveyance or assignment of such land to such new trustees, it appears to the Board of Charity Commissioners desirable so to do, the Board may order that such land be vested in the official trustee of charity lands, and thereupon the same shall vest in such official trustee without any conveyance. But the Board are not to make any such vesting order with respect to any charity the income of which amounts to £50 or upwards, except upon the application of the acting trustees or a majority of them (23 & 24 Vict. c. 136, s. 4). And where the trustees have power to determine on any sale, exchange, partition, mortgage, lease, or other disposition of any charity property, a majority of such trustees present at a meeting duly constituted, voting on the question, have full power to execute and do all assurances, acts, and things for carrying any such sale, &c., into effect, and all such assurances, &c., have the same effect as if they were executed or done by all the trustees and by the official trustee of charity lands (32 & 33 Vict. c. 110, s. 12).

Where it is wished, in order to save the expense of the conveyance, which would otherwise be necessary on every change of trustees, to vest the legal estate in charity lands in the official trustee, it is not proper for the founder of the charity to convey it in the first instance to the official trustee—he should convey it to the acting trustees appointed by himself, and when thus clothed with the charitable trust, it may be vested in the official trustee by an order of the Board made on the application of the trustees.

Course to be pursued to vest lands in official trustee.

GIFT OF COTTAGES FOR ALMS-HOUSES.

intended to be hereby established, which are hereinafter expressed and contained (that is to say):—

In trust to permit same to be used as almshouses, subject to following regulations:—

Charity to be under management of the P—— Court trustee, and the rector and churchwardens for the time being.

1. THE charity shall be under the sole management and control of the following persons as trustees: (that is to say), the P—— Court trustee for the time being, as hereinafter defined, the rector for the time being of the parish of P——, and the churchwardens for the time being of the said parish.

Definition of P—— Court trustee.

2. THE owner for the time being of the capital messuage called P—— Court, or other the principal messuage which shall for the time being be standing on the lands and hereditaments now known as the P—— Court estate, or on any lands and hereditaments which may hereafter be added to and form part of the P—— Court estate, shall be the P—— Court trustee, provided that such owner shall be of full age, and shall be residing at such capital or principal messuage as aforesaid, or elsewhere in the parish of P——, or within —— miles of such parish. If the said capital or principal messuage shall at any time be settled, the person for the time entitled to the first estate of freehold therein shall be deemed the owner thereof. If there shall at any time be two or more joint or co-owners, such one of them as shall be of full age and residing as aforesaid, shall be the P—— Court trustee; but if two or more of such joint or co-owners shall be of full age and residing as aforesaid, they shall select one of their number to be the P—— Court trustee. A woman, if unmarried, may be a trustee; but if a woman who would otherwise be the P—— Court trustee shall marry, then her husband, if of full age and residing as aforesaid, shall be the trustee during such time as she, if unmarried, would be the trustee. If the person who would otherwise be the P—— Court trustee shall be a minor, his or her guardian, if residing as aforesaid, and willing to act, or such one of his or her guardians residing as aforesaid as shall be willing to act, shall be the P—— Court trustee during such minority, unless such minor shall be a married woman, in which case her husband, if of full age and residing as aforesaid, shall be the P—— Court trustee.

If no P—— Court trustee, rector and churchwardens

3. IF it shall at any time happen that there shall be no duly qualified P—— Court trustee, or such trustee being duly qualified shall be unable or unwilling to act, the rector and church-

wardens for the time being of the said parish shall for such time act as the sole trustees of the charity.

to be sole trustees.

Appointment of first trustees.

4. In accordance with the aforesaid provisions, the above-named A. B., C. D., E. F., and G. H., are hereby constituted the first trustees of the charity, and the said C. D., E. F., and G. H., shall respectively cease to be trustees, if and when they shall respectively cease to be rector and churchwardens of the said parish.

Legal estate may be transferred to official trustee of charity lands.

5. Whenever any necessity arises for transferring the legal estate in the said premises, the trustees shall, and they may, if they think fit, at any other time, apply to the Charity Commissioners for an order vesting the estate in the official trustee of charity lands.

Who are to be inmates.

6. The trustees shall from time to time elect to be inmates of the cottages such aged or infirm persons, inhabitants of the said parish of P——, as they the trustees shall consider most deserving objects of the charity. Such inmates may be of either sex, and may be either married or single. No able-bodied person shall be elected, and no inmate shall, without the express permission of the trustees, be allowed to have any person, whether a member of his or her family, or any other person, to live with him or her in the almshouses: it being the intention of the founder of the charity to provide a home for aged or infirm persons who would otherwise be probably compelled to end their days in the union workhouse.

No person to be ineligible on account of religious opinions.

7. No person shall be ineligible or considered a less deserving object of the charity by reason or on account of his or her religious opinions.

Inmates to have use of gardens.

8. The inmates of the cottages shall be permitted to use the gardens attached to the cottages, subject to such rules and regulations as the trustees may from time to time prescribe.

Small rent may be imposed on inmates for certain purposes.

9. The trustees may impose on the inmates of the cottages such small rent as they the trustees may from time to time think necessary or proper for the purpose of paying for the necessary repairs of the cottages, or for insuring the same against loss or damage by fire, or for defraying any expenses which may be incurred in or about the management and administration of the charity, or as evidence of the title of the trustees, but no rent or other payment beyond what shall be necessary for the aforesaid purposes shall be required from the inmates.

Trustees may make rules, and may expel any inmate by giving a month's notice.

10. THE trustees may make rules as to the conduct of the inmates, and may at any time expel or remove any inmate either for misconduct, or because, in the opinion of the trustees, he or she is no longer a proper object of the charity, or for any other reason, by giving to him or her one calendar month's notice in that behalf.

Business to be conducted at meetings.

11. THE election of inmates of the cottages, and all other business of the charity, shall take place and be transacted at ordinary or special meetings of the trustees.

An ordinary meeting to be held each year.

12. THERE shall be one ordinary meeting of the trustees held in each year for transacting the general business of the charity, and such ordinary meeting shall be held on some convenient day to be appointed by the trustees themselves.

Special meetings may be called by any two trustees by notice.

13. ANY two of the trustees may call a special meeting by delivering at the respective dwelling-houses of the other trustees, or sending to them respectively through the post, twenty-one days' previous notice of such meeting, stating the time and place of holding the same, and the objects or purposes for which it is to be held. A notice sent through the post, and addressed to a trustee at his dwelling house, shall be effective although such trustee may at the time be absent from home, and may never actually receive such notice.

Place of meetings.

14. ALL meetings of the trustees shall be held either at P—— Court aforesaid, or at the rectory, or at such other convenient place within the parish of P——, as shall be agreed on by the trustees, or named in the notice convening such meeting.

Three trustees to be a quorum.

15. THREE trustees present at a meeting shall form a quorum.

Chairman of meetings.

16. AT every meeting of the trustees the P—— Court trustee (if present), or if the P—— Court trustee be absent, then the rector of the parish, shall be the chairman of the meeting.

Voting.

17. THE election of the inmates of the cottages and all other business brought before any meeting, shall be decided by a majority of votes of the trustees present, and in case of an equality of votes, the chairman of the meeting shall have a casting vote.

Minutes to be kept.

18. MINUTES of the proceedings of every meeting of the trustees shall be entered in a book to be kept for that purpose and signed by the chairman of such meeting, or of the following

GIFT OF COTTAGES FOR ALMSHOUSES.

meeting, when they are read over, and shall, when so entered and signed, be conclusive evidence of the business and other matters transacted at such meeting.

19. THE trustees may from time to time make such rules and bye-laws for and in relation to the conduct of the business of the charity not inconsistent with the main objects of the foundation as they may think fit.

Trustees may make bye-laws.

IN WITNESS, &c.

No. XIII.

DEED *creating a* MONEY ENDOWMENT *for the* ALMSHOUSES *established by the last* PRECEDENT.

DEED CREATING MONEY ENDOWMENT FOR ALMSHOUSES.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of P—— Court, in the county of ——, Esq., the Rev. C. D. (the present rector of the parish of P——, in the said county), and E. F. and G. H., both of P—— aforesaid, farmers (the present churchwardens of the said parish), SEND GREETING: WHEREAS the said A. B., by a deed-poll dated the —— day of ——, 18—, duly executed and enrolled in the High Court of Justice (Chancery Division), pursuant to the Act passed in the ninth year of the reign of King George the Second, c. 36, conveyed ALL those six cottages, &c. (*describing them*), unto and to the use of the said A. B., C. D., E. F., and G. H., in fee simple: IN TRUST to permit the same to be for ever thereafter occupied by aged and infirm inhabitants of the said parish of P——, according and subject to the rules, regulations, and provisions for the administration and management of the charity intended to be thereby established, which were thereinafter expressed and contained: AND WHEREAS the said A. B. has lately caused the sum of £—— £3 per Cent. Consolidated Bank Annuities to be transferred into the names of the said A. B., C. D., E. F., G. H., in the books of the Governor and Company of the Bank of England, for the purposes hereinafter expressed: NOW THESE PRESENTS WITNESS, and it is hereby declared, and, in particular, the said A. B. doth hereby direct, that the said sum of £—— £3 per Cent. Consolidated Bank Annuities (here-

Recital of deed of grant of almshouses to trustees.

Transfer by donor of stock into names of trustees.

Witnessing part.

Declaration of trust of stock.

DEED CREATING MONEY ENDOWMENT FOR ALMSHOUSES.

inafter called "the said trust stock") shall be for ever hereafter held in trust for the following purposes (that is to say):—

Trustees of almshouses to be trustees of stock.

1. THE trustees for the time being of the charity established by the said recited deed, dated —— day of ——, 18—, shall always be the trustees for the administration of the charity established by these presents.

Dividends to be applied for repairs and insurance of almshouses.

2. THE said trustees shall for ever hereafter receive the dividends of the trust stock, and shall with and out of the said dividends, in the first place, keep the almshouses established by the said recited deed insured against loss or damage by fire, in such an amount as they shall think sufficient; and shall in the next place, with and out of the said dividends, keep the said almshouses in good and substantial repair: And the said trustees shall lay out all moneys (if any) which may be received from time to time under or by virtue of any such insurance as aforesaid, in or towards the rebuilding and reinstating the said almshouses, or such part thereof as shall or may be burnt down or damaged by fire.

Trustees may apply any surplus in their hands above a certain sum for benefit of inmates.

3. IF and whenever the said trustees shall have in their hands a sum of money arising from the dividends of the said trust stock not required for the purposes aforesaid, exceeding in amount the sum of £——, the said trustees may, if they think fit, apply the whole or any part of the surplus over and above the said sum of £——, for the benefit of the inmates for the time being of the said almshouses, or any of such inmates, in such manner as they may think proper.

Stock may be transferred to official trustees.

4. WHENEVER any necessity arises for transferring the said trust stock, the trustees for the time being shall, and they may, if they think fit, at any other time, apply to the Charity Commissioners for England and Wales for an order directing the transfer thereof to the official Trustees of Charitable Funds, in trust for the said charity, and shall, upon such order being obtained, transfer the said stock accordingly.

IN WITNESS, &c.

No. XIV.

CONVEYANCE *of a piece of* GROUND *to the* GOVERNORS *of* QUEEN ANNE'S BOUNTY *as a* SITE *for a* PARSONAGE HOUSE (*a*).

CONVEYANCE OF PIECE OF GROUND AS A SITE FOR A PARSONAGE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., (*grantor*), of the one part, and the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy (*grantees*), of the other part, WITNESSETH, that the said A. B. doth hereby freely and voluntarily and without any valuable consideration, convey unto the said Governors and their successors, ALL THAT piece of ground (*here describe the parcels*), TO HOLD the same unto and to the use of the said Governors and their successors: TO THE INTENT that a house may be built upon a part of the said piece of ground, and be used and appropriated as and for a house of residence, and that the remainder of the said piece of ground may be appropriated as and for a garden or glebe, for the use of the minister or incumbent for the time being of —— church at ——, and generally to the intent that the said piece of ground and premises shall henceforth be devoted to the augmentation of the maintenance of the said minister or incumbent, according to the true intent and meaning of the several Acts of Parliament in that case made and provided.

Conveyance of land to Governors of Queen Anne's Bounty.

That a parsonage house may be built and be used as a residence for incumbent.

IN WITNESS, &c.

(*a*) This deed must be enrolled, 2 & 3 Anne, c. 20, s. 4.

No. XV.

CONVEYANCE OF LAND TO ECCLESIASTICAL COMMISSIONERS.

CONVEYANCE *of* LAND *to the* ECCLESIASTICAL COMMISSIONERS *for the* ENDOWMENT *of the* INCOME *of a* PERPETUAL CURATE *of a new* DISTRICT CHURCH (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., of the one part, and the Ecclesiastical Commissioners for England, of the other part, WITNESSETH, that under the authority of Acts passed in the sessions of Parliament held in the sixth and seventh, and seventh and eighth years of the reign of her present Majesty, intituled respectively, "An Act to make better Provision for the Spiritual Care of Populous Parishes," and "An Act to explain and amend an Act to make better Provision for the Spiritual Care of Populous Parishes," the said A. B. doth by these presents freely and voluntarily, and without any valuable consideration, convey to the said Ecclesiastical Commissioners, ALL, &c. (*describe the premises to be conveyed*), TO HOLD the same to the said Commissioners and their successors for the purpose of, &c. (*describe the particular purpose, being some purpose within the provisions of the said Acts*).

Grant of land to Ecclesiastical Commissioners.

IN WITNESS, &c.

Lands may be given for building or endowment of churches under certain statutes.

(*a*) Lands or any other property may be granted either by deed enrolled or by will, and may either be voluntarily given, or sold for a valuable consideration to the Ecclesiastical Commissioners, for the endowment or augmentation of the income of ministers or perpetual curates of new district churches, or for providing any church or chapel for the purpose of the Act, 6 & 7 Vict. c. 37, s. 22.

The Statutes of Mortmain do not apply to endowments under the Church Building Acts, except where the endowment exceeds the annual value of £300—3 & 4 Vict. c. 60, ss. 2, 3, 17; 14 & 15 Vict. c. 97, s. 8.

See also 36 & 37 Vict. c. 50, authorizing limited owners to give land not exceeding one acre for the site of a place of religious worship or the residence of the officiating minister, upon certain conditions.

No. XVI.

AWARD *as to* PURCHASE *and* COMPENSATION MONEY *to be paid in respect of* LANDS *taken by a* RAILWAY COMPANY (*a*).

AWARD AS TO COMPENSATION FOR LANDS TAKEN BY A RAILWAY COMPANY.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B., of, &c. (*arbitrator*), SEND GREETING: WHEREAS by an instrument in writing dated the —— day of ——, and under the respective hands of C. D., of, &c. (therein stated to be the tenant for life of the lands and hereditaments thereinafter mentioned), and E. F., of, &c., the secretary of the —— Railway Company (therein and hereinafter called "the company"), it was, in pursuance of the Lands Clauses Consolidation Act, 1845, referred to me as a single arbitrator to award and determine what sum of money ought to be paid by the company for the purchase of the inheritance in fee simple of the lands and hereditaments specified in the schedule thereunder written and coloured pink in the map thereunto annexed (of which schedule and map the schedule and map hereunder written and hereunto annexed are respectively copies), and also what further sum of money (if any) ought to be paid by the company as or by way of compensation for or in respect of the damage (if any) to be sustained by the owner of the said lands and hereditaments by reason of the severing of the same lands and hereditaments from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise by the company of the powers of their Act or any Act incorporated therewith: NOW KNOW YE, that I, the said A. B., having taken upon myself the burthen of the said reference, and having, before entering into the consideration of the matters referred to me as aforesaid, duly made and subscribed in the presence of a justice duly authorised in that behalf the declaration required by the said Lands Clauses Consolidation Act, 1845 (which said declaration is hereunto annexed), and having viewed the lands and hereditaments hereinafter mentioned or referred to, and having heard what was alleged by or on behalf of the said parties respectively, and having heard and considered

Recite agreement to refer matter to arbitration.

Award of arbitrator.

(*a*) See 8 Vict. c. 18, sect. 25.

AWARD AS TO COMPENSATION FOR LANDS TAKEN BY A RAILWAY COMPANY.

all such evidence as hath been produced before me, and having duly weighed and considered all and singular the matters and things to me referred as aforesaid, Do make and publish this my award in writing of and concerning the said matters, as follows (that is to say): I DO AWARD AND DETERMINE that the sum of £—— ought to be paid by the company for the purchase of the inheritance in fee simple of the said lands and hereditaments, and that the further sum of £—— ought to be paid by the company as or by way of compensation for or in respect of the damage to be sustained by the owner of the said lands and hereditaments by reason of the severing of the same from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise by the company of the powers of their Act or any Act incorporated therewith.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XVII.

WAIVER OF RIGHT OF ACTION FOR PAST BREACH OF COVENANT.

DEED *of* ARRANGEMENT *for* WAIVING *a* RIGHT *of* ACTION *for the* PAST BREACH *of a* COVENANT, *and for extending the time for its* PERFORMANCE *(by indorsement).*

Parties.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. of the one part, and the within-named C. D. of the other part: WHEREAS the said C. D. has failed to perform the covenant on his part contained in the within-written indenture for the erection and completion before or on the —— day of —— of a good and substantial messuage or dwelling-house on each of the three several plots of ground comprised in the within-written indenture; and he has requested the said A. B. to extend the time for the erection and completion of the said messuages or dwelling-houses to the —— day of ——, which the said A. B. has

Recite that grantee has failed to perform covenant to build three messuages within a given time, and that he has requested covenantee to extend the time.

agreed to do upon the said C. D. entering into the covenant hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the waiver by the said A. B. of his present right of action for the breach of the aforesaid covenant, the said C. D. hereby covenants with the said A. B. that he the said C. D., his executors, administrators, or assigns, will, on or before the —— day of ——, at his own expense, and in a good and workmanlike manner, and to the satisfaction of the said A. B., his executors, administrators, or assigns, or of his or their architect, erect and build and completely finish fit for habitation on each of the said three several plots or parcels of ground comprised in and demised by the within-written indenture a good and substantial messuage or dwelling-house conformably to the plan already signed by the said A. B. and C. D., and in the position shown thereon, and a copy of which plan is endorsed on the within-written indenture and also conformably to an elevation, to be signed and approved of by the said A. B., his executors, administrators, or assigns, before the said C. D., his executors, administrators, or assigns shall proceed to erect any of the said messuages or dwelling-houses: AND IT IS HEREBY AGREED AND DECLARED, that all the covenants by the said C. D. contained in the within-written indenture which relate to the messuages or dwelling-houses to be erected in pursuance of the covenant therein contained for the erection and completion thereof shall be read and construed as in every respect applicable to the messuages or dwelling-houses which shall be erected in pursuance of the covenant hereinbefore contained: and that except so far as the same is expressly varied by these presents, the within-written indenture and everything therein contained shall remain in full force and effect.

WAIVER OF RIGHT OF ACTION FOR PAST BREACH OF COVENANT.

Agreement by covenantee to comply with such request.

Covenant by grantee to build a messuage on each of these plots before a certain day conformably to plan.

Covenants in grant to be applicable to messuages to be erected.

Grant to remain in force, except as varied by this deed.

IN WITNESS, &c.

No. XVIII.

UNDERLEASE OF PART OF LAND COMPRISED IN ORIGINAL LEASE, WITH SPECIAL STIPULATIONS.

UNDERLEASE *of a* PART *of the* PROPERTY *comprised in the* ORIGINAL LEASE; COVENANTS *by* LESSOR *in the event of his* PURCHASING REVERSION *in* FEE SIMPLE, *or obtaining a* RENEWED LEASE, *to* SELL *such* REVERSION *or to grant a* RENEWED LEASE *to the* SUB-LESSEE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other: WHEREAS by an indenture of lease dated the —— day of ——, and made between the Dean and Chapter of ——, of the one part, and the said A. B. of the other part, for the considerations therein mentioned, All that piece or parcel of land (*here describe the piece of land as described in the lease*), were demised unto the said A. B., from the —— day of —— then last past, for the term of twenty-one years, at the yearly rent of £——, and under and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, to be observed and performed: AND WHEREAS the said A. B. hath agreed with the said C. D. for the demise to him of the piece of land hereinafter described (being part of the said piece of land comprised in the said recited indenture of lease), for the unexpired residue of the said term of twenty-one years (wanting the last ten days thereof), upon the terms hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. now paid by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), and in consideration of the rent hereinafter reserved and the covenants of the said C. D., hereinafter contained, the said A. B. (hereinafter called "the sub-lessor,") hereby demises unto the said C. D. (hereinafter called "the sub-lessee,") ALL THAT piece or parcel of land (*describe the land to be underlet*): TO HOLD the same unto the sub-lessee for all the residue now unexpired of the said term of twenty-one years created by the said recited indenture

Recite original lease.

Agreement to grant underlease of part of property.

Sub-demise of parcels

to sub-lessee for original term (wanting ten days).

UNDERLEASE OF PART OF LAND COMPRISED IN ORIGINAL LEASE, WITH SPECIAL STIPULATIONS.

of lease (except the last ten days of the said term), YIELDING AND PAYING therefor during the term hereby granted the yearly rent of 1*s.*: AND the sub-lessee hereby covenants with the sub-lessor that he the sub-lessee will, &c. (*Covenants by sub-lessee, corresponding with the covenants contained in the recited lease—power of re-entry in case rent shall be in arrear or covenants shall be broken—covenant by lessor for quiet enjoyment*): AND the sub-lessor hereby covenants with the sub-lessee that if during the continuance of this lease he the sub-lessor shall agree to purchase the fee simple of the premises comprised in the hereinbefore recited indenture of lease, or of any portion of the same premises which shall include the premises hereby demised, the said sub-lessor will forthwith inform the sub-lessee of such agreement and of the terms and conditions thereof, and it shall be lawful for the sub-lessee at any time within one calendar month after the receipt of such information to give to the sub-lessor a notice in writing stating the wish of the sub-lessee to purchase the fee simple of the lands hereby demised, at the price which the sub-lessor shall have agreed to pay for such fee simple if the said lands shall be the sole subject of his purchase, but in the event of other property being included therein, then at a proportionate part of such price, such proportion to be settled in case of dispute by two referees, one to be chosen by each party, and in case of their disagreement, by an umpire to be chosen by such two persons, but if either party shall neglect or refuse to appoint a referee within ten days after notice shall have been given to him by the other party so to do, then the referee appointed by such other party shall make a final decision alone: AND IT IS DECLARED that the sub-lessee shall pay all the costs and expenses of both parties of and incidental to the purchase by the sub-lessee, and also the costs and expenses of and incidental to the purchase by the sub-lessor if the lands hereby demised shall be the sole subject of the said purchase, but if not, then a proportionate part thereof, such proportion to be settled in case of dispute in manner aforesaid: AND IT IS ALSO DECLARED that the sub-lessee shall be bound by the same terms and conditions as to title and otherwise as the sub-lessor shall be bound by, and the purchase by the sub-lessee shall be completed at the same time as the purchase by the sub-lessor, if the infor-

Covenants by sub-lessee.

Covenant by sub-lessor that in the event of his purchasing reversion in fee simple, sub-lessee shall have option of purchasing same from him.

Expenses to be paid by sub-lessee.

UNDERLEASE OF PART OF LAND COMPRISED IN ORIGINAL LEASE, WITH SPECIAL STIPULATIONS.

mation given by the sub-lessor to the sub-lessee of the said agreement to purchase shall be at least one calendar month before the time appointed for completion, but if not, then the sub-lessee shall be at liberty to postpone the completion of his purchase until the expiration of one calendar month from the receipt of such information as aforesaid: AND the sub-lessor hereby further covenants with the sub-lessee that if during the continuance of this underlease the sub-lessor shall obtain a renewed lease of the premises comprised in the hereinbefore recited indenture of lease, or of any portion of the said premises, which shall include the premises hereby demised, then and in such case the sub-lessor shall at the request and cost of the sub-lessee and upon the surrender by him of the present underlease grant to him a new underlease of the premises hereby demised, for the residue of the term to be granted to the underlessor by such new lease (wanting the last ten days of such term), at the rent of 1*s.* per annum, such new underlease to contain the same covenants and provisions on the part of the sub-lessee and sub-lessor respectively as are contained in this present indenture, including the covenants enabling the underlessee to purchase the fee simple, and to have a renewal of the underlease in case of a further renewal of the superior lease, but with such variations (if any) as may be rendered necessary if the renewed superior lease shall contain covenants different from those in the present superior lease, it being the intention of the parties hereto, that the covenant of the sub-lessee in the new underlease other than the covenant for payment of rent shall correspond to those of the sub-lessor in the new superior lease, so as to be a complete indemnity to the sub-lessor against such covenants so far as the same relate to the premises comprised in the underlease: AND IT IS AGREED AND DECLARED that upon any renewal of the underlease as aforesaid, the sub-lessee shall pay to the sub-lessor for such renewal of the underlease a fine equal in amount to the fine payable by the sub-lessor for the renewal of the superior lease, and shall also pay all other the costs and expenses attending the renewal of the superior lease if the premises comprised in the underlease shall be the sole subject of the new superior lease, but if not, then a proportionate part of the said fine, costs and expenses, such proportion to be settled in case of dispute by two referees or their umpire in manner

Covenant that if sub-lessor shall obtain a renewed lease, he will grant a renewed lease to sub-lessee.

Sub-lessee to pay fine proportionate to that paid by sub-lessor, and proportionate part of costs.

hereinbefore mentioned, and the sub-lessee shall also pay all the costs and expenses attending the renewal of the underlease: AND IT IS HEREBY LASTLY DECLARED that all rights and obligations of the sub-lessor and sub-lessee respectively under these presents or under any renewed underlease to be granted as aforesaid, shall be incident to and devolve with the reversion expectant on this underlease, or on any such renewed underlease as aforesaid, and with the leasehold interest created by this underlease or by any such renewed underlease as aforesaid respectively, and shall accordingly be enjoyed and observed and performed by the person or persons in whom such reversion and leasehold interest respectively shall for the time being be vested.

UNDERLEASE OF PART OF LAND COMPRISED IN ORIGINAL LEASE, WITH SPECIAL STIPULATIONS.

Devolution of rights and obligations of sub-lessor and sub-lessee.

IN WITNESS, &c.

No. XIX.

DEED *of* REVOCATION *and* NEW APPOINTMENT *for the purpose of* APPOINTING TWO *new* TRUSTEES *of the original* SETTLEMENT, *and giving* ONE *of the* DONEES *of the power a* RIGHT *to* CHARGE *the* PROPERTY *with a given* SUM *and* INTEREST.

DEED OF REVOCATION AND NEW APPOINTMENT.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., and C. D., of, &c. (*donees of power*), send greeting: WHEREAS by an indenture of settlement, dated, &c., and made between the said A. B. and C. D., of the first part, E. F. and G. H., of the second part, and L. M. and N. O., of the third part, certain messuages and lands situate at ——, and containing together —— acres, were conveyed by the said A. B. and C. D. to the uses, upon the trusts, and with and subject to the powers and provisions by and in the said indenture of settlement limited, declared and contained concerning the same, including a power enabling the said A. B. to charge the same hereditaments with the sum of £300 and interest as therein is mentioned: AND it was by the indenture now in recital declared that it should be lawful for the said A. B. and C. D. jointly, at any time or times, by any deed or

Recite settlement of hereditaments.

Power to one of donees of power to charge lands with a certain sum.

Power of revocation and new appointment.

deeds, to revoke and make void all or any of the uses, trusts, powers and provisions thereinbefore limited, declared, and contained of and concerning the hereditaments and premises thereinbefore granted, or expressed so to be, or any of them, or any part or parts thereof, and by the same or any other deed or deeds jointly to declare such new or other uses, trusts, powers, and provisions of and concerning the premises to which such revocation should apply as they should think proper: AND WHEREAS the said A. B., in pursuance of the power limited to him in that behalf as aforesaid, did by an indenture, dated, &c., charge all the said hereditaments comprised in the said recited indenture of settlement, with the payment of the sum of £300 and interest as therein mentioned to O. P., of, &c.: AND WHEREAS in the years —— and —— respectively several plots of land being part of the hereditaments comprised in the said recited indenture of settlement, and containing together —— acres or thereabouts, were sold as appears by a memorandum indorsed thereon: AND WHEREAS the said E. F. hath departed this life: AND WHEREAS the said A. B. and C. D. are desirous to substitute W. X., of, &c., and Y. Z., of, &c., to be trustees in the place of the said E. F. and G. H., and also to limit or create a power enabling the said C. D. to charge the hereditaments now remaining subject to the uses of the said indenture of settlements with a further sum of money in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that in order to effect the aforesaid desire, and in pursuance of the power of revocation reserved or limited to them the said A. B. and C. D. as aforesaid, and of every other power in anywise enabling them in this behalf, THEY the said A. B. and C. D. do hereby (but subject and without prejudice to the charge created by the said A. B. as aforesaid, and the sales so made as aforesaid, and any leases which have been granted pursuant to the power of leasing contained in the said indenture of settlement) jointly revoke, determine, and make void all the uses, trusts, powers, and provisions in and by the same indenture of settlement limited, declared, and contained of and concerning such of the hereditaments thereby granted, or expressed so to be, as now remain unsold, or such of the said uses, trusts, powers, and provisions as are now subsisting and capable of taking effect: AND THESE PRESENTS FURTHER WITNESS, that in

Hereditaments charged with sum pursuant to power in settlement.

Sale of part of hereditaments comprised in settlement.

Death of one of trustees of settlement.

Desire of donees of power to substitute two other trustees, and to give power to other donee to charge hereditaments with an additional sum.

Donees of power (subject to charge and past sales and leases) revoke uses, DEED OF REVOCATION AND NEW APPOINTMENT.

and appoint hereditaments not sold to uses as if two new trustees now appointed had been originally appointed.

order further to effect the aforesaid desire, and in pursuance of the power of new appointment reserved or limited to them the said A. B. and C. D. as aforesaid, and of all other powers (if any) in anywise enabling them in this behalf, THE SAID A. B. and C. D. do hereby direct and appoint that all such of the hereditaments granted by the said indenture of settlement as now remain unsold, shall henceforth go, remain, and be To the uses, upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the same hereditaments would now stand limited in case the said W. X. and Y. Z. had been in the same indenture of settlement named as trustees thereof instead of the said E. F. and G. H., and the estates and powers thereby limited to the said E. F. and G. H., their heirs, executors, administrators, and assigns respectively, had been thereby limited to the said W. X. and Y. Z., their heirs, executors, administrators, and assigns respectively, except the power of charging thereby limited to the said A. B., and which hath been exercised as aforesaid, and subject also to the powers hereinafter reserved or contained: PROVIDED ALWAYS, and the said A. B. and C. D. do hereby further appoint and declare that notwithstanding any of the uses and trusts hereinbefore limited and declared and in preference thereto, but subject and without prejudice to the aforesaid charges in favour of the said O. P., it shall be lawful for the said C. D. solely at any time or times, by any deed or deeds, with or without power of revocation and new appointment, to charge all or any of the hereditaments comprised in the said indenture of settlement and now remaining unsold, with the payment to any person or persons whomsoever of any sum or sums of money not exceeding altogether the sum of £100, and the costs of charging and raising the same and interest for the same after the rate of £4 per cent. per annum, and to limit and appoint the hereditaments to be charged therewith to any person or persons for any term or terms of years so that the estate so to be limited or created shall be made subject to redemption on payment by the person or persons who shall be entitled to the reversion of the same hereditaments immediately expectant on the determination of the said term or terms of the sum or sums to be charged as aforesaid, and the interest thereof: PROVIDED ALWAYS, and the said A. B. and C. D. do hereby lastly appoint and declare that it shall be lawful

Further appointment by donees that (subject as aforesaid) one of the donees of the power shall have power to charge hereditaments with a given sum, and to appoint hereditaments for a term for securing same.

DEED OF REVOCATION AND NEW APPOINTMENT.

Power of revocation and new appointment, subject to charge which may be created under aforesaid power.

for the said A. B. and C. D. jointly at any time or times by any deed or deeds (but subject and without prejudice to any charge which shall be created by the said C. D. as aforesaid), to revoke, annul, and make void all or any of the uses, trusts, powers, and provisions hereinbefore expressly and by reference limited, declared and contained of and concerning the hereditaments and premises hereinbefore appointed, or expressed so to be, or any of them, or any part or parts thereof, and by the same or any other deed or deeds jointly to limit and declare such new or other uses, trusts, powers, and provisions of and concerning the hereditaments to which such revocation shall apply as they shall think proper.

IN WITNESS, &c.

No. XX.

PRESENTATION TO A BENEFICE.

PRESENTATION *to a* BENEFICE (*a*).

Presentation to the rectory.

TO THE RIGHT REVEREND FATHER IN GOD, ——, by Divine permission, Lord Bishop of ——, or to his Vicar, general or spiritual, or to any other person having or that shall have sufficient authority in this behalf, I, A. B., of, &c., the true and undoubted patron of the rectory of ——, in the county of ——, within your lordship's diocese and jurisdiction, DO HEREBY PRESENT to your lordship, and to the said rectory of —— aforesaid, now become vacant by the death of the Rev. C. D., clerk, the last incumbent thereof, and to my presentation in full right belonging, The Rev. E. F., clerk, now of ——, in the county of ——, humbly praying that your lordship will be graciously pleased to admit and canonically institute him the said E. F. in and to the said rectory of the parish church of —— aforesaid, and to invest him with all and singular the property, rights, members, and appurtenants thereunto belonging, and to cause him to be inducted into the real, actual, and corporeal

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Stamp on presentation.

(*a*) The stamp duties charged by the 33 & 34 Vict. c. 97, on appointments of ecclesiastical benefices, are repealed by the 40 & 41 Vict. c. 13, sect. 13.

possession thereof, and to do all other things which to your pastoral office may in this case appertain and belong.

PRESENTATION TO A BENEFICE.

IN WITNESS, &c.

No. XXI.

CONVEYANCE *of a* SCHOOLHOUSE *by the* MANAGERS *of an* ELEMENTARY SCHOOL *to a* SCHOOL BOARD, *under Section* 23 *of the* ELEMENTARY EDUCATION ACT, 1870.

CONVEYANCE OF SCHOOLHOUSE TO SCHOOL BOARD.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., G. H., of, &c., J. K., of, &c., L. M., of, &c., O. P., of, &c. (being the majority of the trustees of a certain charity called L—— Charity and competent as such to act and for the purposes of these presents acting as the managers of the said charity) of the one part, and the School Board for —— (hereinafter called "the Board") of the other part: WHEREAS M. L., late of ——, deceased, by her will, bearing date the —— day of ——, and which was duly proved in the Prerogative Court of Canterbury, on the —— day of —— in the same year, bequeathed certain leasehold premises therein mentioned unto certain trustees in her said will named upon trust to apply the annual income thereof in the bringing up, instructing, and educating in the principles of the Christian religion as the same was then taught, professed, and practised in the Established Church of England, 40 poor children—namely, 20 boys and 20 girls of the said parish of ——, and that the said trustees, or the major part of them, should choose and nominate the children to be from time to time entitled to the benefit of the said charity: AND WHEREAS by a scheme annexed to a decree of the High Court of Chancery, made in a suit instituted in the said Court for the administration of the trusts of the said charity, in which suit ——, churchwardens of —— aforesaid, and ——, overseers of the poor of the said parish, on behalf of themselves, and 20 poor boys and 20 poor girls, were plaintiffs and —— were defendants, and

Recital of will of founder of school.

Scheme approved by the Court of Chancery for the administration of the charity.

CONVEYANCE OF SCHOOLHOUSE TO SCHOOL BOARD.

which scheme was confirmed by the Lord Chancellor on the —— day of —— it was (among other things) provided that the trustees for the time being of the said charity, or the major part of them, should from time to time visit the schools of the said charity, elect the objects thereof, and appoint the schoolmasters and schoolmistresses of the same schools, and should, as often in any year as they might think proper, meet at the schoolhouse and examine into the conduct and behaviour of the masters and mistresses, and of such poor children, and see the state and condition of the said school, and consult of proper measures to be taken in and about the performing and executing their said trust, and render accounts thereof: AND WHEREAS by an order of the Board of Charity Commissioners for England and Wales bearing date the —— day of ——, it was ordered that the said several persons, parties hereto of the first part, together with (*other trustees*), be appointed to be trustees for the administration of the said charity: AND WHEREAS the trustees of the said charity are seised or entitled in fee simple as part of the property of the said charity, of or to the schoolhouses and premises, situate at —— aforesaid hereinafter described, and hereby assigned, or intended so to be, subject to the payment of a yearly fee farm or ground rent of £2: AND WHEREAS the schools established by the said charity have been maintained and supported in part by the funds of the said charity; and in further part by the voluntary subscriptions of persons residing in or in the neighbourhood of —— aforesaid; and in further part by an annual grant out of funds appropriated by Parliament for Public Education in Great Britain: AND WHEREAS at a meeting of trustees of the said charity, held at the schoolhouse at —— aforesaid, on the —— day of —— last, in pursuance of a notice for that purpose duly given, by affixing the same against the door of the parish church at ——, and by a post letter addressed to each of the trustees of the said charity, and which notice was dated the —— day of ——, and which meeting was attended by all the trustees of the said charity, except the said —— It was (amongst other things) resolved by a majority of the trustees present at such meeting, and which majority was constituted of the several persons parties hereto of the first part, that in consequence of the falling off of the subscribers to the said schools and the inadequacy of the funds within the control of the

Order of Charity Commissioners appointing trustees.

That trustees are seised of schoolhouse.

That schools have been maintained partly out of their own funds, and partly by subscriptions and partly by government grant.

Meeting of trustees, and resolution to transfer schoolhouse to board.

CONVEYANCE OF SCHOOL-HOUSE TO SCHOOL BOARD.

trustees sufficiently to maintain and support the said schools, it would be for the benefit of all persons interested in the said charity, that the said schoolhouse should be transferred to the School Board of the parish, reserving to the trustees the exclusive use of the school rooms for the purposes of their trusts, on every Sunday, and also between the hours of 9 and 9.45 in the morning on every Friday in each year, the Board undertaking the repairs and insurance against fire of the school premises, and paying the ground rent in respect of the same: AND WHEREAS on the —— day of —— the said proposed arrangement for the transfer to the said Board of the said schoolhouses, received the consent of twenty-five, being all of the annual subscribers to the said schools, who were present at a meeting duly summoned and voted on the question, and also received the consent of the Education Department on the —— day of ——, and the same arrangement was afterwards, in the terms of the said resolution, embodied in certain articles of agreement, bearing date the —— day of ——, and made between, &c. (*parties*): NOW THIS INDENTURE WITNESSETH, that for carrying into effect the said arrangement in relation to the said schoolhouses, and pursuant to and in exercise of the powers and authorities for that purpose conferred by the Elementary Education Act, 1870, THE said several persons parties hereto of the first part, in the character of managers of the said schools, do hereby convey unto the said Board: ALL THOSE the schoolhouses situate at —— aforesaid, now or lately used for the purposes of the said charity, together with the yard, play-grounds, outbuildings, and other the premises to the same belonging, which said schoolhouses, play-grounds, and other premises, are delineated in the plan drawn in the margin of these presents, and are distinguished thereon by the colour pink, and the same have been erected upon and formed out of a certain piece of land, which was in the year —— conveyed to the trustees of the said charity, by one H. S. by the description following (namely), All that, &c. (*describe land,*) To hold the said premises (subject to the said yearly fee farm rent of £2 payable thereout) unto and to the use of the Board in fee simple: To and for the intents and purposes following (namely): To the intent and purpose that the Board shall from time to time hereafter out of the funds under their control pay the said rent payable in respect of the said pre-

That proposed transfer was consented to by all the subscribers and by Education Department.

Witnessing part, managers convey schoolhouses.

To the Board.

To the intent that they shall pay the ground rent, and keep the premises in repair and insured

CONVEYANCE OF SCHOOL-HOUSE TO SCHOOL BOARD.

And subject thereto to the intent that trustees of the charity may have use of premises on Sundays and during certain hours on every Friday.

And subject thereto that same may be a school provided by board within the Act.

mises, and keep the said schoolhouses and premises, and the fences separating the same from the adjoining properties, in good repair, and the buildings insured against loss or damage by fire in a sum equal to the value thereof, in some respectable office of insurance, to be selected by the Board, and approved of by the trustees or trustee for the time being of the said charity, or such of them as shall be competent to act in the execution of the trusts of the said charity, and subject as aforesaid: To the intent and purpose that the trustees or trustee for the time being of the said charity may have the exclusive use of the said schoolhouses, for the purposes of their trust, on every Sunday in each year, and also between the hours of 9 and 9.45 in the morning of every Friday in every year, and subject as aforesaid: To the intent and purpose that the said schoolhouses and premises may be deemed to be a school provided by the Board within the meaning of the Elementary Education Act, 1870.

IN WITNESS, &c.

No. XXII.

MEMORANDUM AND ARTICLES OF ASSOCIATION.

MEMORANDUM *and* ARTICLES *of* ASSOCIATION *of a* JOINT-STOCK COMPANY, LIMITED, *formed under the* COMPANIES ACTS, 1862 to 1880 (*a*).

MEMORANDUM OF ASSOCIATION.

1st. The name of the company is "The —— Land Investment Company (Limited)."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are:—

The acquisition by purchase, lease, or otherwise, of lands, houses, and property, in England and Wales.

The erection of houses and buildings on any land of the company; the enlargement, alteration, and improve-

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(*a*) 25 & 26 Vict. c. 89; 30 & 31 Vict. c. 131; 40 & 41 Vict. c. 26; 42 & 43 Vict. c. 76; 43 Vict. c. 19.

MEMORANDUM AND ARTICLES OF ASSOCIATION.

ment of existing houses and buildings thereon, the converting and appropriating of any such land into and for roads, streets, gardens, pleasure-grounds, and other conveniences and the general improvement of the property of the company.

The selling, leasing, mortgaging, and otherwise disposing of the lands, houses, and other property of the company.

The manufacturing, buying, and selling of bricks, tiles, brick-earth, slates, chalk, sand, and other building materials.

The borrowing of money, the receiving of money on deposit, and the issue of transferable and other bonds, or mortgage debenture, or any other securities, founded or based upon all or any of the real or personal assets or credit of the company.

The transacting and doing of all such matters and things as shall be conducive or incidental to the above objects, or any of them.

4th. The liability of the members is limited.

5th. The nominal capital of the company is £——, divided into —— shares of £— each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Shareholders.	No. of Shares taken by each Subscriber.

Dated the —— day of ——, 18—

Witness to the above signatures,

ARTICLES OF ASSOCIATION.

MEMORANDUM AND ARTICLES OF ASSOCIATION.

It is agreed as follows:—

Table A not to apply.

1. The regulations contained in the table marked A in the first schedule to "The Companies Act, 1862," shall not apply to this company, except so far as the same may be repeated, embodied, or contained in these articles.

Interpretation clause.

2. In the construction of the Memorandum and Articles of Association, unless the contrary be expressed, or is to be inferred from the context—

Words signifying the singular number only shall include the plural, and *vice versâ*;

Words signifying males only shall extend to and include females;

Words signifying persons shall apply, *mutatis mutandis*, to corporations;

The word "month" shall mean "calendar month;"

The words "special resolution" shall mean a special resolution passed in accordance with section 51 of "The Companies Act, 1862."

Capital and Shares.

Capital.

3. The capital of the company shall be £——, divided into —— shares of £— each.

Directors may issue part of capital.

4. The directors may at first issue not less than one third of the capital, and may at any time or times afterwards issue the remainder, or any part thereof, to such persons as they shall think fit.

Joint holders of shares.

5. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share, and on the death of any one or more of such joint holders, the survivors or survivor shall be the only persons recognized by the company as having any title to or interest in such share.

Certificates of shares.

6. Every member shall, on payment of one shilling, or such less sum as the company in general meeting shall prescribe, be entitled to a certificate under the common seal of the company, specifying the shares or share held by him, and the amount paid up thereon. If such certificate be worn out or lost, it may be renewed on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Calls on Shares.

MEMORANDUM AND ARTICLES OF ASSOCIATION.

Application for shares and calls.

7. The directors may require persons applying for shares to pay any sum not exceeding £1 per share, as a deposit on the application for such shares and any further sum not exceeding £1 per share to be paid on the allotment of such shares. And the directors may from time to time make such further calls upon the members, in respect of the amount unpaid on their shares as they shall think fit: Provided that no call shall exceed £1 per share, and that no call be made within three months after the last previous call, and that twenty-one days' notice at least is given of such call. Each member shall be liable to pay the amount of calls so made to the persons, and at the times and places appointed by the company.

Call when deemed to be made.

8. A call shall be deemed to be made at the time when the resolution of the directors authorising such call was passed.

Interest on unpaid calls.

9. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder of such share shall be liable to pay interest for the same at such rate as the directors shall determine, from the day appointed for the payment thereof, to the time of the actual payment.

Directors may receive shares in advance.

10. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or on so much thereof as from time to time exceeds the amount of the calls then made upon the shares, in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Forfeiture of Shares.

Directors may serve notice to pay unpaid call.

11. If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

What the notice should state.

12. The notice shall name a further day on or before which such call and all interest and expenses that have accrued by

reason of such non-payment are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company, or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

If requisitions of notice not complied with, shares may be forfeited by resolution.

13. If requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice shall have been given may at any time thereafter before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

Forfeited share may be disposed of by company.

14. Any share so forfeited shall be deemed to be the absolute property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

Liability of member whose shares are forfeited.

15. Any member whose shares have been forfeited shall, notwithstanding such forfeiture, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

Declaration that share is forfeited to be conclusive.

16. A statutory declaration in writing that a share has been duly forfeited in accordance with the Articles of Association, shall be sufficient evidence of the facts therein stated as against all persons claiming to be entitled to such share and such declaration, and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due, prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such forfeiture and sale.

Directors may remit forfeiture.

17. The directors may, in their discretion, at any time remit any forfeiture which shall have been incurred either before or after such forfeiture shall have been actually declared, upon such terms and conditions as they may think proper, and thereupon the holder of such shares shall be restored to his full rights in respect of the same shares, and be subject to the same liabilities in relation thereto as if such forfeiture had not been incurred: provided always, that no remission of a forfeiture shall be made after the forfeited shares shall have been sold, nor after twelve

calendar months from the declaration of forfeiture, nor so as to prejudice or disturb any dividend which may have been declared.

Transfer of Shares.

Transfer of shares.

18. Subject to Article 20, a member may transfer all or any of his shares. The instrument of transfer of any share shall be executed both by the transferror and transferree, and the transferror shall be deemed to be the holder of such share until the name of the transferree is entered in the register book in respect thereof.

Shares in the company shall be transferred in the following form:

"I   of   in consideration
of the sum of £   paid to [me] by
of   , do hereby transfer to the said
the shares [or share] No.   in the ——
Land Investment Company (Limited), standing in
[my] name in the books of the said company, to hold
unto the said   , his executors, administrators,
and assigns [or their successors and assigns, *as the case
may be*], subject to the several conditions on which I,
the said   held the same at the time
of the execution thereof. And I, the said
do hereby agree to take the said shares
[or share], subject to the same conditions. As WITNESS
our hands, the —— day of ——, 18—."

Registration of transferree.

19. Upon presentation to the company of a transfer, duly signed and stamped, and upon payment of two shillings and sixpence, or such less sum as the company may prescribe, the transferree shall be registered as a member.

Transfer cannot be enforced if shares are not paid up.

20. No member shall be entitled to transfer his shares without the approval of the directors so long as his shares are not fully paid up, nor afterwards if he, either alone or jointly with any other person or persons, is indebted to the company on any account whatever, and if any transfer is made or attempted to be made contrary to this regulation the directors may decline to register the same.

Time of closing transfer books.

21. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

Deceased members.

22. The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

Who entitled to be registered on death, bankruptcy, or marriage of member.

23. Any person becoming entitled to a share in consequence of the death or bankruptcy of any member, or in consequence of the marriage of any female member, or in any other way than by transfer, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

Any person becoming entitled otherwise than by transfer may elect nominee.

24. Any person who shall have become entitled to a share in any other way than by transfer, may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share, provided that if the share is not fully paid up, the person proposed to be registered as a holder thereof shall be first approved of by the directors. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

Evidence to accompany instrument of transfer.

25. The instrument of transfer shall be presented to the directors, accompanied with such evidence as they may require to prove the title of the transferror, and thereupon the directors shall register the transferree as a member.

Conversion of Shares into Stock.

Directors may convert paid-up shares into stock.

26. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

Transfer of stock by holders.

27. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interest therein or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares may be transferred, or as near thereto as circumstances admit.

Participation by holders of stock in profits of company.

28. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company,

and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock, as would not, if existing in shares, have conferred such privileges or advantages.

Increase of Capital.

Increase of capital by issue of new shares.

29. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

New shares how to be offered.

30. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice, specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given, that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

New shares to be considered as part of original capital.

31. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

First and subsequent general meetings.

32. The first general meeting shall be held at such time, not being more than four months (*a*) after the registration of the company, and at such place as the directors shall determine. Subsequent general meetings shall be held once a year at least, as may be prescribed by the company in general meeting, and if no other time and place be prescribed a general meeting shall be

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(*a*) See 30 & 31 Vict. c. 131, sect. 39.

held on the first Wednesday in May in every year, at such time and place as the directors may appoint.

Names for different meetings.

33. The above-mentioned general meetings shall be called ordinary meetings. All other meetings shall be called extraordinary.

Directors may convene extraordinary general meeting on receiving requisition.

34. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by members holding in the aggregate one-tenth part or more of the shares in the company for the time being issued, convene an extraordinary general meeting.

What requisition by members should express.

35. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

On receipt of requisition, directors to convene extraordinary meeting.

36. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members holding the required number of shares, may themselves convene an extraordinary general meeting.

Proceedings of General Meeting.

Notice of meetings to be given by directors.

37. Seven days' notice, at the least, specifying the place, the day, and hour of meeting, and the purpose for which the meeting is to be held, shall be given, either by advertisement or in such other manner as may be prescribed by the directors; and no business shall be transacted at such meeting other than what is specified in such notice. All business shall be deemed special that is transacted at an extraordinary meeting, and also all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

Ten members must be present.

38. No business shall be transacted at any meeting (except the declaration of a dividend) unless ten members be personally present at the commencement of such business.

Consequence of requisite number not being present.

39. If, within one hour from the time appointed for the meeting, the required number of members be not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned for one week, at the same time and place, and if at such adjourned meeting the required number of members shall not be present, the meeting shall be adjourned *sine die*.

40. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company, but if there is no chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, then the deputy chairman (if any) of the board of directors, shall preside at such meeting. If neither the chairman nor the deputy chairman shall be present within fifteen minutes after the time appointed for such meeting, the members present shall choose some one of their number to be chairman of such meeting.

Chairman of board, or in his absence deputy chairman, to preside.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Adjournment of meeting.

42. Every question, except where otherwise provided by "The Companies Act, 1862," or by these regulations, shall be decided by a simple majority of the votes given thereon. Upon all questions a show of hands shall in the first instance be taken, and the question shall be decided by such show of hands, unless upon or immediately after such show of hands a poll shall be demanded in writing by at least five members entitled to vote, but no poll shall be allowed on a question of the adjournment of the meeting.

How questions are to be decided.

43. If a poll is demanded as aforesaid, it shall be taken in such manner as the chairman of the meeting shall direct, and he shall have power to adjourn the meeting for a reasonable time for the purpose of taking such poll, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In case the poll be not taken on the day on which it is demanded, notice shall be given of the time and place of taking such poll in the same manner as in the case of an adjourned meeting.

Proceedings if a poll is demanded.

44. Minutes shall be made in books provided for the purpose of all resolutions and proceedings of general meetings, and any such minute if signed by any person purporting to be the chairman of the meeting to which it relates, or to be the chairman of the board of directors, shall be receivable as evidence of the facts therein stated without further proof.

Minutes to be made in books.

45. A declaration by the chairman of the meeting that a

Declaration

by chairman that resolution has been carried to be evidence.

resolution has been carried, and an entry to that effect in the book of proceedings shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution, and whether or not a poll shall be taken thereon. In case of an equality of votes at any general meeting, or upon the result of any poll, the chairman shall have a second or casting vote.

Votes of Members.

What votes members shall have.

46. Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first one hundred shares.

When a member is lunatic, or idiot, or a minor.

47. If any member is a lunatic or idiot, he may vote by his committee, curator bonis, or other legal curator; and if any member be a minor, he may vote by his guardian, tutor, or curator, or any one of his guardians, tutors, or curators, if more than one.

Joint shares.

48. If two or more persons are jointly entitled to a share, the member whose name stands first in the register of members as one of the holders of such share, and no other, shall be entitled to vote in respect of the same.

No member to vote unless all calls are paid.

49. No member shall be entitled to a vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months from the time of holding the meeting at which he proposes to vote.

Votes may be given personally or by proxy. Proxy to be appointed in writing.

50. Votes may be given either personally or by proxy.

51. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor be a corporation, under their common seal, and shall be in the form or to the effect following:—

> "*The* —— *Land Investment Company* (*Limited*).
>
> "I of being a member of the above-named company, and entitled to vote or votes, hereby appoint of to be [my] proxy

to vote for me and on my behalf at the ordinary [or extraordinary or adjourned, *as the case may be*] general meeting of the company, to be held on the   day of   next, and at any adjournment thereof. As WITNESS [my hand] this —— day of ——, 18—."

Only members to be appointed proxies.

52. No person shall be appointed a proxy who is not a member of the company. The instrument appointing a proxy shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

Directors.

Number of directors.

53. The directors shall not be more than —— or less than —— in number.

Director must hold —— shares to be eligible.

54. No person shall be appointed a director unless he holds at least thirty shares, on which all calls for the time being made shall have been fully paid up.

When office of director shall be vacated.

55. The office of director shall be vacated—

If he ceases to hold thirty shares in the company.

If he holds any office or place of profit under the company.

If he becomes bankrupt, compounds with his creditors, or becomes lunatic, or of unsound mind.

If he absents himself from the directors' board meeting for six successive months without the consent of the directors.

If he is concerned in, or participates in the profits of any contract with the company, provided always that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director: nevertheless he shall not vote in respect of such contract or work, and if he does so vote his vote shall not be counted.

Notice to be left by director desiring to resign.

56. If a director shall desire to resign his office, he shall leave a notice in writing of such his desire at the registered office of the company, and on the acceptance of his resignation by the board, but not before, his office shall be vacant.

Director shall resign if requested to do so by all his co-directors.

57. If any director shall be requested in writing signed by all his co-directors to resign his office, he shall resign the same accordingly, and if he shall fail so to do for the space of forty-eight hours after he shall receive such request, or after the same shall have been left at his usual or last known place of abode or business, such of his co-directors as may be present at a special board meeting, may remove such director from his office, provided they are unanimous therein.

First directors.

58. The following persons shall be the first directors of the company, namely, ——, ——, ——, ——, ——, ——.

Directors may supply vacancies and appoint additional directors before specified period.

59. The directors may at any time and from time to time before the ordinary general meeting to be held in the year ——, supply any vacancies in their number arising from death or resignation or otherwise, and may also appoint additional directors, so as at the time of holding such meeting the number of directors shall not exceed ——, but no vacancy need be filled up unless the number of directors be reduced below ——.

As to casual vacancies occurring after that.

60. Any casual vacancy occurring in the number of directors subsequently to the ordinary meeting in ——, may be filled up by the board, subject to the approval of the next ordinary meeting, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred. All acts done by a person appointed to be a director under this Article previously to the ordinary meeting following his appointment, shall be valid and effectual whether his appointment shall be confirmed thereat or not.

What directors must retire at ordinary meetings.

61. At the ordinary meeting to be held in ——, and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third shall retire from office.

How to be determined.

62. The one-third or other nearest number to retire in the years —— and ——, shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year the one-third or other nearest number who have been longest in office shall retire.

Retiring director to be re-eligible.

63. A retiring director shall be re-eligible.

The filling up of vacated offices.

64. The company, at the general meeting at which any directors retire in manner aforesaid, shall fill up the vacated offices by electing a like number of persons: provided always that no person other than a director retiring in rotation shall be

elected a director at any such meeting, unless he shall have left at the registered office of the company, a notice, in writing, of his willingness to act as a director, at least fourteen days before the day of holding such meeting.

If places of vacated directors are not filled up at meeting, it shall be adjourned.

65. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

Company may increase or reduce number.

66. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

Compan may by special resolution remove director and appoint another by ordinary resolution.

67. The company in general meeting may by a special resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Remuneration of directors.

68. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Managing director and his remuneration.

69. A managing director may be appointed by the directors on such terms and conditions as to special remuneration and tenure of office as he and the directors may agree on.

Powers of Directors.

Business of company.

70. The business of the company shall be managed by the directors, who may proceed to carry out the objects of the company immediately upon the incorporation thereof, and notwithstanding a part only of the nominal capital of the company shall have been taken up or subscribed. They may pay out of the funds of the company all expenses incurred in getting up and registering the company. They may exercise all such powers of the company as are not by "The Companies Act, 1862," or by these Articles required to be exercised by the company in

general meeting, subject nevertheless to any regulations of these Articles, to the provisions of the said Act, and to such regulations not being inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Directors in particular to have power to do following things.

71. Subject to the restrictions herein contained, the directors shall have power to do all acts and things which they may consider proper or advantageous for accomplishing the objects and carrying on the business of the company, and in particular (but so as not to restrain the preceding generality) they shall have power to do the following things:—

To purchase, take on lease, or otherwise acquire any lands, houses, or other property, upon such terms and conditions in all respects as the directors may think fit.

To erect on any lands acquired or held by the company any houses or buildings, whether for residence or business, or as and for churches, chapels, schools, markets, museums or other public institutions, and to enlarge, alter, improve, furnish, and fit up existing houses or buildings for all or any of the aforesaid uses or purposes, and to appropriate and convert any such lands into or for roads, streets, squares, gardens, pleasure grounds, open spaces, drains, sewers, and other conveniences, or otherwise to improve any lands, houses, or other property of the company, in any manner which they may think fit.

To sell or exchange any lands, houses, or other property of the company, or any easements, rights, or privileges, to be exercised or enjoyed in or over any such lands, houses and property, upon such terms and conditions and in such manner in all respects as the directors may think fit.

To let or demise any lands, houses, and other property of the company (either with or without any easements, rights, or privileges to be exercised or enjoyed in or over other lands, and as to houses either furnished or unfurnished), to any person or persons, either as a yearly, monthly, weekly, or other tenant, or by way of lease for any term or number of years, and either for occupation or for building or other purposes, at such rent and subject to such covenants and conditions, and in such manner in all respects as the directors shall think fit.

To manufacture, buy, and sell bricks, tiles, brick earth, slates, chalk, sand, and other building materials, upon such terms and in such manner as the directors shall think fit.

To raise or borrow such sums of money as they may from time to time think expedient, either by way of mortgage of the whole or any part of the property of the company, or by bonds or debentures, or in such manner as they deem best, and so that any mortgage or other security, made under this power, may contain a power of sale of the property comprised therein, and such other powers and provisions as may be thought fit.

To receive money on deposit, on such terms, as to rate of interest and otherwise, as the directors may think fit.

To make and to enter into all such contracts and agreements, for all or any of the purposes aforesaid, and from time to time rescind, vary, and abandon the same or any of them.

To institute, conduct, defend, compromise, refer to arbitration, and abandon legal and other proceedings by and against the company, and the directors and officers of the company, and otherwise relating to the affairs of the company.

To invest such part of the funds of the company as shall not be required for the immediate purposes of the company, on such securities and on such terms as they may think fit, and from time to time to vary the investments.

Proceedings of Directors.

Meetings to be held by directors.

72. The directors shall hold meetings for the dispatch of business at such times and places, and may adjourn and otherwise regulate such meetings, as they think fit, and may determine

the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the chairman shall have a second or casting vote.

Three directors may require special meeting.

73. Three directors may at any time require that a special meeting of the directors be summoned, and on notice to him to that effect the chairman or secretary shall summon the same accordingly.

Chairman of board.

74. There shall be a chairman of the board. The first chairman shall be ——, and all subsequent chairmen shall be elected by the board.

Continuance in office of chairman.

75. The said ——, and all subsequent chairmen shall continue in office for such period as the board shall determine.

If there is no chairman, directors may choose one of their number.

76. If at any time there shall be no chairman, or the chairman is not present at the time appointed for holding a board meeting, the directors present shall choose one of their number to be chairman of such meeting.

Directors may delegate powers to committees.

77. The directors may delegate any of their powers to committees of two or more members of their body, as they may think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed by the directors.

Managing director to be member of committees.

78. The managing director (if any) shall be *ex officio* a member of all committees, unless otherwise expressly ordered.

Committee may elect chairman.

79. The committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

Committee may meet, adjourn, and regulate meetings.

80. The committee may meet, adjourn, and otherwise regulate their proceedings as they think proper. Questions arising at any meeting shall be determined by a majority of votes, and in case of an equality of votes, the chairman shall have a second or casting vote.

Ratification of acts done by directors or committee.

81. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as chairman or as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if such person had

been duly appointed and was qualified to be a director or chairman.

Minutes, &c.

82. Minutes shall be made in books provided for that purpose of the names of the directors present at each meeting of directors and committee of directors, and of all resolutions and proceedings of the directors and committee of directors. Any such minute signed by any person purporting to be the chairman of any meeting of directors or committee of directors, shall be receivable in evidence of the facts therein stated without further proof.

Officers of the Company.

First secretary.

83. Mr. —— is hereby appointed the secretary of the company, and he shall not be removed from that office except by a vote of three-fourths of the directors.

Company's secretary and other officers.

84. The company shall have a secretary, solicitor, auditors, and such other officers, clerks, and servants as may be required for the purposes of the company.

Except where otherwise provided, officers to be appointed by directors.

85. Except where otherwise provided by these Articles, the officers and servants of the company shall hold office during the pleasure of the directors, and the appointment, salaries, allowance, commission, or compensation and removal of the first or any future officers or servants of the company shall in like manner vest in the directors.

Directors may appoint trustees.

86. The directors may appoint any persons, whether directors or not, to be trustees for any of the purposes of the company.

Indemnity to directors and other officers.

87. The directors, trustees, auditors, secretary, solicitor, and other officers, shall be indemnified by the company from all losses and expenses incurred by them in or about the discharge of their respective duties, except such as happen from their own respective wilful act or default.

No director or other officer to be liable for each other

88. No director, trustee, or officer shall be liable for any other director, trustee, or officer, or for joining in any receipt or other act for conformity, or for any loss or expense happening to the company, unless the same happen from his own wilful act or default.

Accounts of officers.

89. The accounts of any trustee or officer may be settled and allowed or disallowed, either wholly or in part, by the board.

Books, &c., to be kept by secretary.

90. The secretary shall keep the records, books, and papers of the company, not being securities, and shall allow, between the

hours of ten in the forenoon and twelve at noon, such inspection of the register of members as is provided by "The Companies Act, 1862," so as every member or other person, before inspecting it, sign his name in a book kept for that purpose, and shall allow such inspection of the register of bonds or debentures as is provided by the same Act and these Articles of Association, but shall not allow any other inspection of the records, books, or papers without the express direction of the board.

Instruments to be sealed.

91. The secretary shall affix the seal with the authority of the board, and in the presence of two directors, to all instruments required to be sealed, and shall countersign all such instruments.

Dividends.

Directors may declare dividend.

92. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

Dividend payable out of profits.

93. No dividend shall be payable except out of the profits arising from the business of the company.

Reserve fund.

94. The directors may before commanding any dividend, set aside, out of the profits of the company, such sum as they may consider proper, to form a fund to be called "The Reserve Fund," and to be used for meeting contingencies, or for paying off or discharging any preliminary or other extraordinary expenses, or for equalising dividends, or for any other purposes connected with the business of the company, or in furtherance of the objects thereof: provided always, that the reserve fund shall not, at any one time, exceed the amount from time to time fixed by the company in general meeting.

Application of reserve fund.

95. The reserve fund may be from time to time applied by the directors in their full discretion to all or any of the aforesaid purposes, and in the meantime the directors may invest and accumulate the same in such securities as they may think proper, and may from time to time alter and vary such investments.

Dividend may be paid half-yearly.

96. When in the opinion of the board the profits of the company permit, there may be a dividend every half year, and in order thereto a half-yearly dividend may be declared and paid by the board by way of dividend on account.

Holder of share receiving

97. The holder of a share receiving or entitled to receive a dividend on account in respect of the share shall be entitled

thereto, notwithstanding his ceasing to be holder of the share before the declaration of the dividend in respect of which the dividend on account was declared.

dividend on account.

Company may deduct moneys due from members.

98. The company may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

Notice of dividend.

99. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

100. No dividend shall bear interest as against the company.

Accounts.

Accounts to be kept by directors.

101. The directors shall cause true accounts to be kept:

1. Of the property of the company;
2. Of all sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place; and
3. Of the credits and liabilities of the company.

Books to be kept at registered office.

102. The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of members during the hours of business.

Statement of income and expenditure.

103. At the ordinary meeting in each year, the directors shall lay before the members a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

What statement must show.

104. The statement so made shall show arranged under the most convenient heads the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated with the addition of the reason why

only a portion of such expenditure is charged against the income of the year.

Balance-sheet.

105. A balance-sheet shall be made out in every year, and laid before the company in general meeting; and such balance-sheet shall be made up to the same date as the statement above mentioned, and shall contain a summary of the property and liabilities of the company, arranged under such heads and in such form as the company in general meeting may prescribe, or as the directors may from time to time determine.

Printed copy to be sent to address of members.

106. A printed copy of such balance-sheet shall, seven days previously to such meeting, be sent by post to the registered address of every member.

Audit.

Audit of accounts.

107. Once in every year the accounts of the company shall be examined, and the correctness of the balance-sheet thereof shall be ascertained by two auditors.

First and subsequent auditors.

108. —— and —— shall be the first auditors of the company, and shall hold office until the first ordinary general meeting in ——. Subsequent auditors shall be appointed by the company at their first ordinary meeting in ——, and in subsequent years.

Who may be auditors.

109. The auditors may or may not be members of the company, but no person shall be eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company shall be eligible during his continuance in office.

Remuneration of auditors.

110. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

Auditors to be re-eligible.

111. Any auditor shall be eligible for re-election on his quitting office.

Casual vacancies.

112. Any casual vacancy occurring in the office of auditor, subsequent to the ordinary meeting in ——, shall be filled up by the directors; any person so chosen shall continue in office until the next ordinary meeting.

When Board of Trade may elect auditors.

113. If no election of auditors be made in manner aforesaid, the Board of Trade may, on the application of not less than thirty members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his service.

114. Every auditor shall be supplied with copies of the profit and loss statement and the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

Auditors to be supplied with statement and balance-sheet.

115. The auditors shall have a list delivered to them of all books kept by the company, and shall at all reasonable times have access to all the books and accounts of the company for the purpose of inspecting and examining the same. They may, at the expense of the company, employ accountants and other persons to assist them in examining and investigating such books and accounts; and they may, in relation to such accounts, at any time question or examine the directors or any other officer of the company.

Auditors to have access to books, &c.

116. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the whole of the company's affairs, and such report shall be read, together with the report of the directors, at the ordinary meeting.

Auditor's report.

Notices.

117. A notice may be served by the company on any member, either personally or by sending it through the post, in a prepaid letter, addressed to such member at his registered place of abode.

Notice how to be served.

118. No member who has not a registered place of abode in the United Kingdom shall be entitled to have any notice sent to him.

Only members having registered places of abode entitled to notice.

119. Notices required to be given by advertisement may be given by advertising the same in not less than two London daily morning newspapers, to be chosen in the first instance by the directors, and no change in the papers so chosen shall be made except by the company in general meeting.

Notices, when required to be given by advertisement.

120. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put in the post-office, and all notices given by advertisement shall be deemed

Notices, if served by post.

MEMORANDUM AND ARTICLES OF ASSOCIATION.

to have been given on the day on which the first advertisement appeared.

Notices as to joint holders.

121. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

Arbitration.

Arbitration clause.

122. If any dispute or difference shall at any time arise between any of the members, whether officers or servants of the company or not, concerning anything herein contained or relating hereto or to the concerns of the company, the same shall be referred to arbitration in manner following, that is to say:—Each of the parties (whether consisting of one or more persons) between whom the difference shall exist shall in writing appoint one arbitrator, and the arbitrators so appointed shall in writing, within ten days after the appointment of such one of them as shall be last appointed, appoint an umpire; and in case either party in difference shall refuse or neglect to appoint an arbitrator within ten days after a requisition in writing from the other party so to do, then the arbitrator chosen by the party making such request shall appoint an arbitrator on behalf of the party who shall so refuse or neglect as aforesaid; and in case the arbitrators to be appointed under this clause shall not within such ten days as aforesaid appoint an umpire, then some person to be chosen by the company in general meeting shall be the umpire; and the award of the said arbitrators or of their umpire (as the case may be) shall be final and conclusive in the matters referred to them or him, and such awards shall be made rules of the Court of Queen's Bench or other court of record in Great Britain, pursuant to the statute in such case made and provided, on application of either of the parties in difference.

Names, Addresses, and Descriptions of Shareholders.

APPENDIX.

SETTLED LAND ACT, 1882.

45 & 46 Vict. c. 38.

An Act for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon. [10 August, 1882.]

45 & 46 Vict. c. 38.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—Preliminary.

PRELIMINARY.

Short title; commencement; extent.

1.—(1.) This Act may be cited as the Settled Land Act, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

II.—Definitions.

DEFINITIONS.

Definition of settlement, tenant for life, &c.

2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust

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for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income:

(ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(iii.) Building purposes include the erecting and the improving of, and the adding to and the repairing of, buildings; and a building lease is a lease for any building purposes or purposes connected therewith:

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes:

(v.) Manor includes lordship, and reputed manor or lordship:

(vi.) Steward includes deputy steward, or other proper officer, of a manor:

(vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will:

(viii.) Securities include stocks, funds, and shares:

(ix.) Her Majesty's High Court of Justice is referred to as the Court:

(x.) The Land Commissioners of England as constituted by this Act are referred to as the Land Commissioners:

(xi.) Person includes corporation.

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SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

General Powers and Regulations.

General Powers and Regulations.

Powers to tenant for life to sell, &c.

3. A tenant for life—

(i.) May sell the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same; and

(ii.) Where the settlement comprises a manor—may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and

(iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and

(iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Regulations respecting sale, enfranchisement, exchange, and partition.

4.—(1.) Every sale shall be made at the best price that can reasonably be obtained.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale, the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

General Powers and Regulations.

(7.) An enfranchisement may be made with or without a regrant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

Special Powers.

Special Powers.

Transfer of incumbrances on land sold, &c.

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

IV.—LEASES.

LEASES.

General Powers and Regulations.

General Powers and Regulations.

Power for tenant for life to lease for ordinary or building or mining purposes.

6. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

(i.) In case of a building lease, ninety-nine years:

(ii.) In case of a mining lease, sixty years:

(iii.) In case of any other lease, twenty-one years.

Regulations respecting leases generally

7.—(1.) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.

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General Powers and Regulations.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified, not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Building and Mining Leases.

Building and Mining Leases.

Regulations respecting building leases.

8.—(1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with building purposes.

(2.) A peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(i.) The annual rent reserved by any lease shall not be less than ten shillings; and

(ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be

Building and Mining Leases.

reserved in respect of the whole land for the time being leased; and

(iii.) The rent reserved by any lease shall not exceed one fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

Regulations respecting mining leases.

9.—(1.) In a mining lease—

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

(ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with mining purposes.

Variation of building or mining lease according to circumstances of district.

10.—(1.) Where it is shewn to the Court with respect to the district in which any settled land is situate, either—

(i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity; or

(ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit, authorize generally the tenant for life to make from time to time leases or grants of or affecting

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Building and Mining Leases.

the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and, subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

Part of mining rent to be set aside.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely—where the tenant for life is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

Special Powers.

Special Powers.

Leasing powers for special objects.

12. The leasing power of a tenant for life extends to the making of—

(i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title; and

(ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and

(iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

Surrenders.

Surrenders.

Surrenders and new grant of leases.

13.—(1.) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

Copyholds.

Copyholds.

Power to grant to copyholders licences for leasing.

14.—(1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

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SALES, LEASES, AND OTHER DISPOSITIONS.

V.—SALES, LEASES, AND OTHER DISPOSITIONS.

Mansion and Park.

Mansion and Park.

Restriction as to mansion house, park, &c.

15. Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court.

Streets and Open Spaces.

Streets and Open Spaces.

Dedication for streets, open spaces, &c.

16. On or in connexion with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof—

(i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connexion therewith; and

(ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and

(iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be inrolled in the Central Office of the Supreme Court of Judicature), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

Streets and Open Spaces.

Surface and Minerals apart.

Surface and Minerals apart.

Separate dealing with surface and minerals, with or without way-leaves, &c.

17.—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water or drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Mortgage.

Mortgage.

Mortgage for equality money, &c.

18. Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act.

Undivided Share.

Undivided Share.

Concurrence in exercise of powers as to undivided share.

19. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

Conveyance.

Conveyance.

Completion of sale, lease, &c., by conveyance.

20.—(1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or

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Conveyance.

intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(i.) All estates, interests, and charges having priority to the settlement; and

(ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and

(iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to shew the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the court rolls.

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VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

Capital money under Act; investment, &c. by trustees or Court.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

(i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of the investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:

(ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land:

(iii.) In payment for any improvement authorized by this Act:

(iv.) In payment of equality for exchange or partition of settled land:

(v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land:

(vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life:

(vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty

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years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land:

(viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes:

(ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge:

(x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of this Act:

(xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Regulations respecting investment, devolution, and income of securities, &c.

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

Investment in land in England.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same.

Settlement of land purchased, taken in exchange, &c.

24.—(1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part

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thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

IMPROVEMENTS.

VII.—IMPROVEMENTS.

Improvements with Capital Trust Money.

Improvements with Capital Trust Money.

Description of improvements authorized by Act.

25. Improvements authorized by this Act are the making or execution on, or in connexion with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

(i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses:

(ii.) Irrigation; warping:

(iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure:

(iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water:

(v.) Groynes; sea walls; defences against water:

(vi.) Inclosing; straightening of fences; re-division of fields:

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(vii.) Reclamation; dry warping:

(viii.) Farm roads; private roads; roads or streets in villages or towns:

(ix.) Clearing; trenching; planting:

(x.) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not:

(xi.) Farm-houses, offices, and out-buildings, and other buildings for farm purposes:

(xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise:

(xiii.) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption:

(xiv.) Tramways; railways; canals; docks:

(xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes:

(xvi.) Markets and market-places:

(xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land:

(xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid:

(xix.) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines:

(xx.) Reconstruction, enlargement, or improvement of any of those works.

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Improvements with Capital Trust Money.

Approval by Land Commissioners of scheme for improvement and payment thereon.

26.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

(i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on

(ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on

(iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

Concurrence in improvements.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorized by this Act, or in contributing to the cost thereof.

Obligation on tenant for

28.—(1.) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Land Commissioners by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Commissioners by certificate in any case prescribe.

Improvements with Capital Trust Money.

life and successors to maintain, insure, &c.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the Commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the Commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The Commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

Execution and Repair of Improvements.

Execution and Repair of Improvements.

Protection as regards waste in execution

29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract

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Execution and Repair of Improvements.

and repair of improvements.

with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorized by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

Improvement of Land Act, 1864.

Improvement of Land Act, 1864.

Extension of 27 & 28 Vict. c. 114, s. 9.

30. The enumeration of improvements contained in section nine of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorized by this Act.

CONTRACTS.

VIII.—CONTRACTS.

Power for tenant for life to enter into contracts.

31.—(1.) A tenant for life—

(i.) May contract to make any sale, exchange, partition, mortgage, or charge; and

(ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and

(iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and

(iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and

(v.) May enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same; and

(vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

IX.—Miscellaneous Provisions.

MISCELLANEOUS PROVISIONS

Application of money in Court under Lands Clauses and other Acts.
8 & 9 Vict. c. 18.
23 & 24 Vict. c. 106.
32 & 33 Vict. c. 18.
40 & 41 Vict. c. 18.

32. Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respect-

45 & 46 Vict. c. 38.

ing costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court.

Application of money in hands of trustees under powers of settlement.

33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

Application of money paid for lease or reversion.

34. Where capital money arising under this Act is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

Cutting and sale of timber, and part of proceeds to be set aside.

35.—(1.) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

Proceedings for protection or recovery of land settled or claimed as settled.

36. The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to

be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

Heirlooms.

37.—(1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court.

X.—TRUSTEES.

TRUSTEES.

Appointment of trustees by Court.

38.—(1.) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act.

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

45 & 46 VICT. c. 38.

Number of trustees to act.

39.—(1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee.

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Trustees' receipts.

40. The receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

Protection of each trustee individually.

41. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

Protection of trustees generally.

42. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see or to be an swerable for the investigation of the

title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease.

Trustees' reimbursement.

43. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

Reference of differences to Court.

44. If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit.

Notice to trustees.

45.—(1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

45 & 46 VICT. c. 38.

XI.—COURT; LAND COMMISSIONERS; PROCEDURE.

COURT; LAND COMMISSIONERS; PROCEDURE.

Regulations respecting payments into Court, applications, &c.

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court effectually exonerates therefrom the person making the payment.

(3.) Every application to the Court shall be by petition, or by summons at Chambers.

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

39 & 40 Vict. c. 59.

44 & 45 Vict. c. 68.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made accordingly (*a*).

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be also exercised by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) General Rules, and Rules for the Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is

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(*a*) Rules have accordingly been made, which came into operation at the same time as the Act, and which are to be cited as the Settled Land Act Rules, 1882.

invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connexion with which the personal chattels to be dealt with in the Court are settled.

Payment of costs out of settled property.

47. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

Constitution of Land Commissioners; their powers, &c.

48.—(1.) The commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, and the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of this Act, become and shall be styled the Land Commissioners for England.

(2.) The Land Commissioners shall cause one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

45 & 46 Vict. c. 38. (3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise any of those commissioners, in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders of any court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed, shall and may be carried on and completed by or under the authority of the Land Commissioners; and the Land Commissioners, for the purpose of prosecuting, or defending, and carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or more, as the case may require, of the three several bodies of commissioners aforesaid.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the Improvement of Land Act, 1864; and the provisions of the last-mentioned Act relating to their proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed, by which any power or duty is conferred or imposed on them.

Filing of certificates, &c. of Commissioners.

49.—(1.) Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

XII.—Restrictions, Savings, and General Provisions.

RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

Powers not assignable; contract not to exercise powers void.

50.—(1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exerciseable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

Prohibition or limitation against exercise of

51.—(1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and powers, void.

partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

Provision against forfeiture.

52. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

Tenant for life trustee for all parties interested

53. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

General protection of purchasers, &c.

54. On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

Exercise of powers;

55.—(1.) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court or the Land Commissioners are exerciseable from time to time.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

Limitation of provisions, &c.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

Saving for other powers.

56.—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exerciseable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exerciseable for any purpose provided for in this Act.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

Additional or larger powers by settlement.

57.—(1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement any powers additional to or larger than those conferred by this Act,

45 & 46 VICT. c. 38.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exerciseable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

XIII.—LIMITED OWNERS GENERALLY.

LIMITED OWNERS GENERALLY.

Enumeration of other limited owners, to have powers of tenant for life.

58.—(1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

(i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services:

(ii.) A tenant in fee simple (*a*), with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event:

(iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:

(iv.) A tenant for years determinable on life, not holding merely under a lease at a rent:

(v.) A tenant for the life of another, not holding merely under a lease at a rent:

(vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose:

(vii.) A tenant in tail after possibility of issue extinct:

(*a*) This would not extend to a person in whom leaseholds are vested for the whole term, subject to an executory limitation, &c., the expression "fee simple" being a technical one.

(viii.) A tenant by the curtesy:

(ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

XIV.—INFANTS; MARRIED WOMEN; LUNATICS.

INFANTS; MARRIED WOMEN; LUNATICS.

Infant absolutely entitled to be as tenant for life.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof (*a*).

Tenant for life, infant.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Married woman, how to be affected.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman who, if she had not been a

(*a*) This section and the next provide a convenient mode of selling an infant's land. Thus, if land descends in fee simple on an infant, trustees for the purposes of the Act may be appointed by the Court upon summons, and such trustees will have power to sell on behalf of the infant and receive the money.

married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

Tenant for life, lunatic.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

SETTLEMENT BY WAY OF TRUSTS FOR SALE.

XV.—Settlement by way of Trusts for Sale.

Provision for case of trust to sell and re-invest in land.

63.—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof (*a*); and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen,

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(*a*) It will be observed that where a part only of the proceeds of the land is directed to be held in trust for a person for life, the entire land is to be deemed settled land, and the persons beneficially entitled to the income of the land concurrently until sale constitute together the tenant for life. It follows that if by a will real estate has been devised to trustees in trust to sell and divide the proceeds among the testator's children absolutely, the trustees can sell without any consent, but if the will directs (as is very common) that the shares of daughters shall be settled so as to give them life interests only, it is apprehended that all the children, sons and daughters, will constitute together a tenant for life, and that having regard to section 56, sub-section (2), no sale can be made without the consent of all of them. Other illustrations might be given with a view to shew the serious inconvenience likely to arise from the joint operation of sections 56 and 63 particularly as applied to general trusts for sale under wills.

45 & 46 Vict. c. 38.

or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).

(ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorized by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

45 & 46 Vict. c. 38.

XVI.—REPEALS.

REPEALS.

Repeal of enactments in schedule.

64.—(1.) The enactments described in the schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

XVII.—IRELAND.

IRELAND.

Modifications respecting Ireland.

65.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that Division.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that Division.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

40 & 41 Vict. c. 57.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exerciseable by the

45 & 46 Vict. c. 38. Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

40 & 41 Vict. c. 56. (7.) The provisions of Part II. of the County Officers and Courts (Ireland) Act, 1877, relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exerciseable by those Courts under this Act.

(8.) Rules and Orders for purposes of this Act, as far as it relates to the Civil Bill Courts, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act, in manner prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877.

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years.

THE SCHEDULE.

Repeals.

23 & 24 Vict. c. 145, in part.	An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages, and wills . . .	in part; namely,— Parts I. and IV. (being so much of the Act as is not repealed by the Conveyancing and Law of Property Act, 1881).
27 & 28 Vict. c. 114, in part.	The Improvement of Land Act, 1864	in part; namely,— Sections seventeen and eighteen: Section twenty-one, from "either by a party" to "benefice) or" (inclusive); and from "or if the land owner" to "minor or minors" (inclusive); and "or circumstance" (twice): Except as regards Scotland.
40 & 41 Vict. c. 18, in part.	The Settled Estates Act, 1877 .	in part; namely,— Section seventeen.

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